



**HODDER LAW FIRM**

August 5, 2022

**SENT VIA EMAIL:**

Department of Financial Protection and Innovation, Legal Division  
Attn: Araceli Dyson, Regulations Coordinator\*  
2101 Arena Boulevard  
Sacramento, CA 95834  
[regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)

**Re:** Invitation for Comments – Crypto Asset Related Financial Products and Services

Dear Araceli Dyson,

Hodder Law Firm, P.A. appreciates the opportunity to present these comments to the California Department of Financial Protection and Innovation (the DFPI) regarding crypto asset related financial products and services.

We've had the privilege of working with several crypto-asset market participants and found the vast majority to be highly intelligent, sincere, thoughtful, and creative entrepreneurs seeking to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Please find our answers to California's questions below.

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

**Fraud.** We believe the existing laws are sufficient to protect consumers from fraudulent companies. Fraudulent custodial cryptocurrency exchanges can be enforced against by your office under the existing state banking or securities laws, as well as the federal securities laws or Bank Secrecy Act.

**Scams.** When it comes to protecting consumers from the plethora of social engineering scams, the Department may consider allocating additional resources to providing state-wide education, so consumers are more aware of the various scams to look-out for and how best to protect themselves.

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

The DFPI could sponsor an ad-campaign about how to safely store crypto related passwords and the importance of using 2FA software on all email, social media, and crypto-related accounts. A lot of people still recycle their passwords or store their password in their photos or cloud-based documents, which can be easily accessed by a sophisticated hacker.

**3. What steps should the DFPI take to better ensure consumer protection in the offering and provision of crypto asset-related financial products and services?**

None, the industry is already heavily regulated through existing laws at both the state and federal levels.

**4. What steps should the DFPI take to better ensure investor protection in the offering and provision of crypto asset-related financial products and services?**

None, the industry is already heavily regulated through existing laws at both the state and federal levels.

**5. What steps should the DFPI take to better ensure financial stability in the market from risks posed in the offering and provision of crypto asset-related financial products and services?**

None, the industry is already heavily regulated through existing laws at both the state and federal levels.

**6. What steps should the DFPI take to address climate risks posed in the offering and provision of crypto asset-related financial products and services?**

None. A comprehensive research [report](#) from Galaxy Digital has calculated the energy consumed by the Bitcoin network and then compared it to other industries, including the banking industry. It found that Bitcoin consumes 113.89 terawatt hours (TWh) per year, while the banking industry consumes 263.72 TWh per year. Considering Bitcoin's disruptive, decentralized, peer-to-peer nature, it is the best type of currency the planet has ever benefited from. Bitcoin is durable, portable, divisible, scarce, and uniform. The global distributed network makes it very unlikely to be hacked. It can't be controlled by an intermediary or weaponized by a government. It can't be manipulated and inflated to the point it loses its purchasing power. It has been the best performing asset class of all time. It is worth the energy it uses.

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

The DFPI should follow the same approach as is currently taken by FinCEN, which exempts non-custodial software providers and payment processors.

**8. In developing a comprehensive regulatory approach to crypto asset-related financial products and services, how should the DFPI work with other state financial regulators to promote a common approach that increases the reach of DFPI's**

**consumer protection efforts and reduces unnecessary burdens, if any, on companies seeking to operate nationwide?**

I'm not aware of any existing regulatory overlap within the state of California.

**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?**

California should adopt all the existing rules implemented by Wyoming.

**10. How should the DFPI ensure that California values of inclusive innovation and equity-focused consumer protection are core components of crypto asset-related financial products and services as it develops guidance and, as appropriate, regulatory clarity and supervision of those persons involved in the offering and provision of crypto asset-related financial products and services in California?**

California could offer more educational scholarships in the fields of computer programming and technology.

**11. Financial Code section 90009, subdivision (a) of the CCFPL authorizes the DFPI to “prescribe rules regarding registration requirements applicable to a covered person engaged in the business of offering or providing a consumer financial product or service.” Are regulations needed to require registration of crypto asset-related financial products and services with the DFPI under Financial Code section 90009, subdivision (a) of the CCFPL? What factors should be considered in determining whether the offer or provision of a crypto asset-related financial product or service should trigger registration?**

The decision should turn on whether the Company offering the services can steal its customers funds. If so, that Company should be regulated. Non-custodial software providers, and Companies engaged in two-party transactions should not require any additional state-regulation.

**12. Financial Code section 90005, subdivision (k)(12) of the CCFPL states that “financial product or service” includes “offering another financial product or service as may be defined by the department, by regulation,” subject to certain criteria. Are regulations needed to specify crypto asset-related financial products and services that should be included in the definition of a “financial product or service” subject to CCFPL authority?**

No.

**13. Financial Code section 90009, subdivision (c) of the CCFPL authorizes the DFPI to “prescribe rules applicable to any covered person or service provider identifying as unlawful, unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the**

**offering of a consumer financial product or service.” Are regulations needed to identify any unlawful, unfair, deceptive, or abusive acts or practices in connection with the offering of crypto asset-related financial products and services?**

No.

**14. Financial Code section 90009, subdivision (d) of the CCFPL authorizes the DFPI to “prescribe rules applicable to any covered person to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.” Are regulations needed to ensure that features of crypto asset-related financial products and services are fully, accurately, and effectively disclosed?**

No.

**15. Financial Code section 90009, subdivision (f)(2) of the CCFPL authorizes the DFPI to “require any covered persons and service providers participating in consumer financial services markets to file . . . annual or special reports, or answers in writing to specific questions, as necessary for the department to fulfill its monitoring, assessment, and reporting responsibilities.” Are regulations needed to require the filing of reports in connection with the offering of crypto asset-related financial products and services?**

No.

**a. A. Should the DFPI adopt rules requiring covered persons to file reports related to the offering and provision of crypto asset-related financial products and services? If so, what should such reports contain, and which report responses should be made publicly available?**

No.

**b. Should the DFPI adopt rules requiring service providers to file reports related to the offering and provision of crypto asset-related financial products and services? If so, what should such reports contain, and which report responses should be made publicly available?**

No.

**16. The Executive Order directs the DFPI to conduct a market-monitoring inquiry to solicit voluntary information from companies and licensees about their cryptocurrency-related financial products and services to assist DFPI in carefully undertaking any future efforts, including formal rulemaking under the CCFPL. The DFPI invites input and comments on the market-monitoring inquiry, including in response to the following questions:**

**a. Which companies should the DFPI include in the inquiry?**

Custodial exchanges.

**b. What products and services should be included in the inquiry?**

Custodial exchanges.

**c. What information, if any, should the DFPI collect and publish in the aggregate?**

The DFPI could collect and publish (1) the number of SARs and CTRs it files, (2) the estimated cost of these filings, (3) the common scams the Company is regularly combatting and how it handles them, and (4) the number of times it receives requests from customers who have lost their funds due to poor password management.

**d. Should the DFPI publicly post its inquiry online and allow any company to voluntarily respond?**

Yes.

The rapid development in the digital asset marketplace will undoubtedly lead to novel products, services, and financial instruments that could help improve our lives in ways that we have yet to even conceptualize. These innovations require significant investment of both financial and human capital, which are attracted only if the winners can reap rewards. Regulating this industry with too heavy a fist could disincentivize such innovation.

We hope these comments are constructive to the Commission as it considers further changes to the regulatory framework for the digital assets industry and would welcome the opportunity to discuss or clarify any of these points with the Commission.

Respectfully Submitted,

**Hodder Law Firm, P.A.**

s/Sasha A. Hodder  
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