

August 5, 2022



Department of Financial Protection and Innovation, Legal Division
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Dear Commissioner Hewlett:

Ripple Labs Inc. (Ripple) welcomes the opportunity to comment on the California Department of Financial Protection and Innovation's (DFPI) invitation for comments on crypto asset-related financial products and services (Invitation) under the California Consumer Financial Protection Law (CCFPL). The Invitation was offered in response to California Governor Newsom's [Executive Order](#), which tasks the DFPI with soliciting input from stakeholders "in developing guidance and, as appropriate, regulatory clarity and supervision...in the offering and provision of crypto asset-related financial products and services in California."

Ripple, a San Francisco-headquartered company, strongly believes that California - as the birthplace of Silicon Valley - understands well the promise (and challenges) inherent in the digital asset space. Already a global hub for technology development, talent cultivation, and business innovation, California can become a leading U.S. destination for digital asset business and investment growth by implementing a simple, clear and principles-based regulatory framework that will protect consumers and allow industry to flourish.

Introduction

Using blockchain technology, Ripple allows financial institutions to process payments instantly, reliably, cost-effectively, and with end-to-end visibility anywhere in the world. Our customers are financial institutions that want tools to effect faster and less costly cross-border payments, as well as eliminate the uncertainty and risk historically involved in moving money across borders using interbank messaging alone. All this is done in compliance with AML/BSA regulations.

Some customers, in addition to deploying Ripple's "blockchain" solution (RippleNet), leverage a digital asset known as XRP. Just as Bitcoin is the native asset to the open-source Bitcoin ledger, and Ethereum is the native asset to the open-source Ethereum ledger, XRP is the native asset to the open-source XRP Ledger. XRP, given its

unique design, can serve as a near instantaneous bridge between fiat currencies (or any two representations of value), further reducing the friction and costs for commercial financial institutions to transact across multiple global markets.

Although Ripple utilizes XRP and the XRP Ledger in its product offerings, XRP is independent of Ripple. The XRP Ledger is decentralized, open-source, and operates on what is known as a “consensus” protocol. While there are well over a hundred known use cases for XRP and the XRP Ledger, Ripple leverages XRP for use in its product suite because of XRP’s suitability for cross-border payments. Key characteristics of XRP include speed, scalability, energy efficiency, and cost efficiency, all of which benefits the consumer and helps reduce friction in the market for cross-border payments.

With this overview, Ripple respectfully submits the following responses to Questions 1-4 and 6-10 set forth in the Invitation in the attached Appendix.

Sincerely,

Ripple Labs Inc.

Appendix

Regulatory Priorities

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

The DFPI can best ensure consumers are protected from crypto asset-related scams and frauds by creating a regulatory environment that offers clear rules for companies operating in the digital asset space and maintains consistency with how federal regulatory agencies oversee crypto asset-related products and services. Currently, however, there is a lack of regulatory clarity at the federal level that has resulted in a fractured environment where oversight is conducted in an uncoordinated, piecemeal fashion. California thus has an opportunity to be a leader with respect to regulation.

The U.S. Congress is currently debating several legislative proposals that would resolve the existing regulatory gridlock, including the Digital Commodity Exchange Act (DCEA, H.R. 7614 in the 117th Congress) and Responsible Financial Innovation Act (RFIA, S.4356 in the 117th Congress), both of which would clarify that the Commodity Futures Trading Commission (CFTC) has authority over spot digital asset commodity markets. The CFTC's commodity market regulation is well established and widely accepted, and provides robust customer protection including core principles, segregation of customer assets, and legal certainty within the federal bankruptcy regime. In addition, both seek to provide clarity over how digital assets are categorized, and in turn how companies dealing with those assets are regulated with respect to disclosures and information-sharing practices.

As the DFPI begins to develop regulations and associated guidance, consumer protection can best be achieved by similarly adopting frameworks that establish clear oversight regimes of industry players and categorizations of digital assets, as well as implementing relevant disclosure requirements and information-sharing practices. Such “rules of the road” are essential not just for companies seeking to be in compliance with state authorities as they develop products and services, but also for consumers who seek confidence in the markets. While the DCEA and RFIA are still in the early stages of the legislative process, the DFPI can protect California consumers by implementing rules and regulations which align as best as possible with federal proposals such as these.

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

According to a 2021 Chainalysis report on global cryptocurrency adoption,¹ the United States ranked eighth out of 154 countries, with interest among American consumers

¹ Chainalysis, [The 2021 Global Crypto Adoption Index](#) (October 14, 2021).

continuing to grow. Relatedly, the Pew Research Center estimates about 16% of Americans have invested, traded, or used crypto assets in some way.² This increasing rate of adoption demonstrates the need for public education and outreach when it comes to understanding digital assets. Onboarding citizens into a system who are unclear on how to use it or the benefits thereof runs the risk of low adoption rates or potentially underachieving on financial inclusion goals, not to mention raises the potential that they may fall victim to scams and fraudulent behavior.

Proactively reaching out to communities to educate them on products and services; improving the user experience (e.g., to account for disabilities); and implementing a “play-to-earn” model that ensures consumers know how to use a digital wallet before they start handling digital assets are all options that could make the transition to a digital-first system easier. The DFPI can incorporate education and outreach as part of its principles-based regulatory approach, allowing businesses the opportunity to identify on their own the most effective ways they can achieve consumer education objectives.

As a company committed to better informing individuals on how crypto assets and blockchain technology can more efficiently facilitate cross-border transactions, Ripple has placed an increased focus on training and education. Through our University Blockchain Research Initiative,³ Ripple is collaborating with leading universities around the world to support and accelerate academic research, technical development and innovation in blockchain, cryptocurrency and digital payments. One such example is the Berkeley Haas Blockchain Initiative, where in addition to financial resources, Ripple provides students and faculty with strategic guidance, technical resources, and other opportunities for engagement such as workshop training, start-up program advisorship, and curriculum content development.⁴ Partnerships like these can be leveraged to help facilitate a broader education and outreach effort.

(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?

Similar to our response to Question (1) above, the DFPI can protect consumers as businesses continue to develop and introduce crypto asset-related products and services into the market by instituting a principles-based regulatory framework that is clear and concise, aligns with federal regulations and legislation, and incorporates similar protections to those used in financial services offerings (e.g., ensuring protection of customer assets and systems safeguards, requiring product disclosures). This approach will ensure companies enact consumer protection practices yet does not restrict them (or DFPI) to a specific, one-size-fits-all process.

² Pew Research Center, [16% of Americans say they have ever invested in, traded or used cryptocurrency](#), (November 11, 2021).

³ <https://ripple.com/impact/ubri/>.

⁴ <https://haas.berkeley.edu/blockchain/>.

(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?

Ripple believes that establishing a principles-based regulatory framework for digital assets, similar to that relied on by the CFTC, will help advance many of the DFPI's objectives concurrently, including ensuring investor protection. Businesses that are building products and services for the crypto market should adhere to core principles such as guarding against market manipulation and abusive practices, fostering transparency and openness of information, and ensuring market integrity. By incorporating principles like these into a regulatory framework, market participants can act with confidence and businesses can implement procedures and protocols without needing to abide by overly-prescriptive rules.

(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?

As California continues to experience the severe impacts of climate change, it is critical to understand how digital asset products and services can be leveraged to increase economic activity and achieve goals like financial inclusion without putting additional strain on the environment. Cryptocurrency has become increasingly mainstream – with more financial institutions and individual investors racing to leverage this technology – resulting in energy consumption accelerating to already unsustainable levels. Globally, the damages from climate change are projected to amount to almost 3% of GDP by 2060.⁵

Ripple strongly believes, however, that digital assets can be compatible with a low-carbon economy that emphasizes renewable energy and reduces its environmental footprint, making their usage consistent with the State and Governor Newsom's priorities. The DFPI should focus on ways this approach to digital assets can be encouraged and utilized as it seeks to regulate the digital asset space.

As an example of how digital assets can align with climate change goals, in 2020, Ripple partnered with Energy Web (EW) and the Rocky Mountain Institute (RMI) to decarbonize public blockchains – starting with the XRP Ledger, the first major global blockchain to do so.⁶ Ripple as a company has also pledged to achieve carbon net zero by 2030 or sooner.

Additionally, Ripple is a supporter of the Crypto Climate Accord⁷ (CCA) – an initiative organized by EW, RMI and the Alliance for Innovation Regulation (AIR) focused on decarbonizing cryptocurrencies to ensure the global financial system is less harmful

⁵ OECD, [Economic interactions between climate change and outdoor air pollution](#) at 3 (July 3, 2019).

⁶ <https://ripple.com/ripple-press/ripple-leads-sustainability-agenda-to-achieve-carbon-neutrality-by-2030/>

⁷ <https://cryptoclimate.org/>.

and more sustainable. Key objectives of the CCA, which counts over 200 companies and individuals as supporters,⁸ include:

- Enable all of the world's blockchains to be powered by 100% renewables by the 2025 UNFCCC COP Conference
- Develop an open-source accounting standard for measuring emissions from the cryptocurrency industry
- Achieve net-zero emissions for the entire crypto industry, including all business operations beyond blockchain and retroactive emissions by 2040

Finally, while many currencies (whether digital or physical) are not environmentally friendly, the XRP Ledger processes transactions through a unique "consensus"⁹ mechanism that consumes negligible energy and all XRP currency is already in circulation. Specifically, the XRP Ledger utilizes a distributed agreement protocol which establishes super-majority agreement, or consensus, around a given transaction without the need for energy intensive mining characteristic of other digital assets. Further, XRP itself was designed with sustainability in mind; it is an inherently green currency. All XRP is already in existence, meaning no unsustainable mining practices or additional energy is ever required to produce more.

As the DFPI considers the climate impact of crypto asset-related products and services, there is an emerging consensus among digital asset industry members and climate advocacy organizations that blockchain is an important, potentially transformative technology with respect to helping global carbon markets modernize and scale to accelerate progress toward globally agreed climate goals (e.g., the Paris Agreement). The DFPI could play a critical role in interagency collaboration by, for instance, working with the California Air Resources Board (CARB), which manages the State's Cap-and-Trade Program, to help identify blockchains or protocols that may be most beneficial to CARB.

Blockchain's native characteristics make it a natural fit to address persistent pain points in carbon markets, including unclogging supply bottlenecks, reducing time to market for carbon credit producers, and bringing about dramatically higher transparency and data integrity. Blockchain can also help enable fairer price discovery and deliver a more equitable return to those engaged in high quality carbon removal activity (i.e., additive, permanent, verifiable removals). Finally, blockchain can improve the tracking and tracing of carbon removal activity and carbon market transactions, making it easier for buyers to meet their ESG commitments and both shareholder and regulatory reporting requirements. Far from exacerbating global emissions problems, blockchain can help solve them by creating a more powerful market infrastructure to accommodate the needs of both suppliers and buyers of carbon credits.

⁸ <https://cryptoclimate.org/supporters/>.

⁹ David Schwartz, [The Environmental Impact: Cryptocurrency Mining vs. Consensus](#) (July 8, 2020).

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

Companies building digital asset products and services in the United States are currently faced with a regulatory landscape that lacks clarity and consistency at the federal level. As a result, states across the country considering regulation over these products and services are finding it increasingly more challenging to achieve alignment with the approach taken by federal authorities, particularly as more diverse and innovative cryptocurrency offerings continue to be introduced to the marketplace.

A prime example of the regulatory ambiguity prevalent today is the fact that determining if a particular token in the cryptocurrency space is an “investment contract” (i.e., a security) is purportedly based on the Securities and Exchange Commission’s (SEC) application of the Supreme Court’s 1946 *Howey*¹⁰ case. But rather than simply applying *Howey*,¹¹ the SEC issued “non-binding” guidance in April 2019. That guidance has been criticized by many, including SEC Commissioner Hester Peirce who compared it to a Jackson Pollock work insofar as it “splash[es] lots of factors on the canvas without any clear message.”¹² And even within that guidance, the SEC takes the position that not all elements of the Supreme Court’s *Howey* test are needed.¹³

As mentioned in Question (1), Congress is currently considering legislation that would provide regulatory clarity to the digital asset space. While we believe the DFPI should closely monitor these efforts, we do not believe it should wait for Congress to act before it moves forward with issuing its own regulations and other related guidance. We believe that California has a unique opportunity to serve as a leader in this space and the best way to balance the twin goals of protecting consumers while promoting innovation is to adopt a principles-based approach similar to that employed by the CFTC.

(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?

In the absence of a clear regulatory regime at the federal level, state legislatures and regulatory agencies are left to decide how to properly oversee a burgeoning industry with immense potential for transformation and innovation. Unfortunately, this also

¹⁰ *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946).

¹¹ SEC Strategic Hub for Innovation and Financial Technology, [Framework for “Investment Contract” Analysis of Digital Assets](#) (April 3, 2019).

¹² SEC Commissioner Hester M. Peirce, [How We Howey](#) (May 9, 2019).

¹³ “The Commission, on the other hand, does not ... view a ‘common enterprise’ as a distinct element of the term ‘investment contract.’” See [Framework for “Investment Contract” Analysis of Digital Assets](#) at n. 10.

results in an inconsistent mixture of approaches that vary across state lines, creating confusion for consumers and frustration among businesses who have to abide by different sets of rules and regulations in order to provide their products and services to customers nationwide.

It is important for the DFPI to engage closely with other state regulators, particularly from those states experiencing the greatest influx of crypto business (e.g., Wyoming), to understand how their regulatory environment contributed to the industry's expansion within their jurisdiction. Equally important, the DFPI should engage closely with industry participants, as they are the ones experiencing first-hand how gaps between state regulatory regimes are impacting them and how those gaps can be filled. Establishing working groups or other avenues for communication where the DFPI can receive frequent industry feedback will allow the DFPI to develop its regulations not in a vacuum, but instead in an open manner that will encourage greater alignment with other state regulatory regimes.

(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 current lack of regulatory certainty has resulted in an environment where market participants - many of whom are making good faith efforts to comply with existing laws, rules and regulations - simply do not feel comfortable innovating in the United States. By contrast, several foreign jurisdictions have now established comprehensive frameworks with respect to digital assets, including Singapore (the Payment Services Act) and the European Union (the Markets in Crypto Assets regulation). These laws, among other things, establish taxonomies covering crypto assets and stablecoins, create clear oversight regimes, and seek to protect consumers from the risks associated with digital assets, thus providing strong incentive for companies to establish outside the United States.

The competition for business growth and talent is not just between countries. It also exists within the United States. Several states have taken proactive steps to demonstrate their commitment to incorporating digital assets and crypto-related technology into their economy and their corresponding interest in attracting investment, business and talent from the digital asset space. For example, various states have proposed legislation accepting cryptocurrency as tax payments,¹⁴ providing incentives such as tax credits and training for crypto mining,¹⁵ and incorporating digital assets into their economy to make it easier for crypto companies to do business.¹⁶

¹⁴ [Colorado will start accepting cryptocurrency for tax payments](#) (March 2, 2022).

¹⁵ [State Lawmakers in Illinois, Georgia Propose Tax Incentives for Bitcoin Miners](#) (Feb. 18, 2022).

¹⁶ [Texas Law Creates Legal Clarity For Bitcoin](#) (May 27, 2021).

To date, the regulatory ambiguity that exists in California has resulted in companies opting to establish themselves and grow in other jurisdictions,¹⁷ but “if there was a supportive regulatory environment, it would strengthen California’s status in crypto.”¹⁸ For California to remain the most desirable destination for responsible companies and talent, the DFPI should implement clear regulations and requirements that allow the agency to ensure consumer and investor protection and market integrity without burdening companies with unnecessary restrictions or bureaucracy.

Ripple supports California and Governor Newsom’s priorities regarding the cultivation of the digital asset space, and they should be encapsulated in any guidance developed by the DFPI. However, to maintain its competitiveness vis-a-vis its neighbors and beyond, the DFPI should balance those priorities with the cost businesses face when developing and launching innovative products and services.

(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?

A principles-based regulatory approach would allow the DFPI to incorporate those values that California deems significant without being overly prescriptive or potentially favoring one type of business model or crypto asset over another.

California has a longstanding reputation of being a leader when it comes to overseeing industries in ways that account for social values. An example of this is how the State puts primacy on environmental protection out of concern for climate change and the drastic impact it can have on California’s land and residents. Other values such as financial inclusion and equity also hold significance for the crypto industry, as they are illustrative of how crypto can provide societal benefits in ways that traditional finance is currently lacking. To this end, one example of how California can ensure inclusive innovation and equity is to adopt rules that allow for non-financial institutions to offer crypto-related products and services to the public with proper supervision and oversight. Encouraging greater competition not only spurs innovation but offers greater choice and lower costs to the public. Similarly, allowing alternative methods to meet credit or “Know Your Customer” requirements - for example, by leveraging registered SIM cards and mobile phones as a way of proving identity for payments without a traditional ID number - could help widen access for crypto-asset services.

Diversity and inclusion, particularly with respect to representation in the technology and venture capital sector, has been another area where California has sought to merge its

¹⁷ [How Miami Seduced Silicon Valley](#) (Sept. 8, 2021).

¹⁸ [California wants to be the country’s crypto capital. But will consumers be left behind?](#) (July 22, 2022).

values into its regulatory framework; SB 826,¹⁹ which passed in 2018 but is now under litigation,²⁰ is an example of this, as it would have required California-based public companies to appoint female members to its board of directors. As just one demonstration of Ripple's commitment to diversity and inclusion efforts, all of our funding and resources (referenced in Question (2) on education) is accessible to all Historically Black Colleges and Universities, with our primary HBCU partnership being with Maryland-based Morgan State University.²¹ We hope this type of investment in traditionally underserved and underrepresented communities helps build a more diverse and inclusive crypto workforce.

As the DFPI moves forward with enumerating its values and including them into its regulatory approach, we would encourage frequent engagement with the crypto business community to ensure that, if finalized, industry innovation is not hampered. California can further the development of the industry in a responsible and socially conscious manner as it balances these two priorities.

¹⁹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB826.

²⁰ [Court Overturns California Law Requiring Women on Boards of Directors](#) (June 1, 2022).

²¹ [Morgan State University Announces Multi-Year Financial Technology Program With Silicon Valley-based Firm](#) (February 7, 2019).