Jul 26, 2022

Jennifer Rumberger
Senior Counsel for the Commissioner
California Department of Financial Protection and Innovation, Legal Division

Dear Jennifer Rumberger,

SaverLife is grateful for the opportunity to share our perspective on digital financial assets ("crypto") and related financial products and services. On behalf of more than 600,000 members and supporters of SaverLife, we offer the following comments in response to the invitation from the California Department of Financial Protection and Innovation (DFPI).

SaverLife is a national nonprofit organization that leverages financial technology to solve America's savings crisis and advocate for an equitable financial system. Through our online savings platform, we support a membership community of people living with low incomes who seek to improve their financial health. We advocate for our members and partners with fellow nonprofits, industry experts, and public policymakers to bring data-driven insights and our members' real-world perspectives to issues of financial inequity. SaverLife members are low-to-moderate-income households, a majority of whom identify as women, belonging to communities of color, and as parents making less than $50,000 per year. We have nearly 40,000 members in California.

SaverLife's roots are in California. Originally named EARN, SaverLife was founded in San Francisco by a group of prominent California policymakers, professionals, and financiers who wanted to create prosperity for families through saving. Since our 2001 founding, EARN rebranded as SaverLife, and our members remain the heart of our operations. Today, our mission is to support all people in the United States to build wealth and create a prosperous life for generations to come.

We have noticed a growing popularity of crypto products and digital assets among SaverLife members in our data. We define crypto assets as digital currencies or assets that are exchanged on a digital ledger. In the first quarter of 2022 alone, SaverLife data showed that 1,396 members engaged with Coinbase; they collectively deposited $494,000 (about $120 per person per month) and withdrew $299,000 (about $73 per person per month).

We believe that digital currencies and assets can offer many benefits to our members. The digital asset marketplace can inspire innovation, improve financial efficiency, encourage inclusion, and provide opportunities to build wealth. However it can also pose many serious challenges, including potential illicit financing, regulatory arbitrage, and consumer and business abuse.

These challenges, along with the inherent volatility of digital assets, the growing prevalence of criminal actors in the crypto marketplace, and a lack of trusted information about how crypto and digital assets work, can lead to devastating impacts for low- to moderate-income consumers and investors. Recent survey data from Federal Reserve[1] shows that 29 percent of those holding cryptocurrency and six in ten transactional users of cryptocurrencies have an income of less than $50,000 and 13 percent do not have a bank account.

In particular, investors who belong to communities of color are more vulnerable[2] to swings in the crypto market and to the practices of predatory actors compared to white communities. Survey data from the Pew Research Center[3] shows that Black, Hispanic, and Asian consumers are more likely to have engaged in the digital asset marketplace, compared to white consumers.

To address these growing challenges, public agencies are looking to regulate the marketplace of digital currencies and assets. This includes establishing consumer protections that safeguard the most vulnerable populations from the risk of insecurity and ensuring that markets for consumer financial products are fair, transparent, and competitive.

At a national level, President Biden recently issued an executive order on digital assets[4]—an order that initiated a whole-of-federal-government assessment of key issues raised by crypto assets and related technologies.

Similarly, California committed to strong rules and protections for consumers. With the 2020 Consumer Financial Protection Law, the establishment of the Department of Financial Protection and Innovation (DFPI), and Governor Newsom's recent executive order[5] that calls for

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[1] Federal Reserve's 2021 Survey of Household Economics and Decisionmaking
[2] Cachero, P. Jul 7, 2022. "Crypto Collapse Threatens to Leave Black, Hispanic Investors Further Behind". Bloomberg.
[3] Perrin, A. Nov 11, 2021. "16% of Americans say they have ever invested in, traded or used cryptocurrency." Pew Research Center.
[4] The 2022 White House Executive Order Ensuring Responsible Development of Digital Assets.
[5] State of California, Executive Order N-9-22.

a transparent and consistent business environment, California is taking steps to address a regulatory framework for digital assets and currencies at a state level.

SaverLife calls upon the state of California to be a leader in consumer protections for digital assets and currencies, to build stability and resilience in the marketplace, and ensure that the financial security of consumers, rather than specific digital solutions, products, or industries, remains the focal point for all rulemaking and activities.

A robust marketplace is one that has rules in place to ensure fair play. In a thriving marketplace, both buyers and sellers have a clear and shared understanding of the prices, risks, and terms so that consumers can understand their options and comparison shop. Companies must all play by the same consumer protection rules and compete fairly on providing quality and service.

To this end, we recommend that the DFPI enact the following consumer and investor protections.

Recommendation 1: Require that all crypto and digital-asset providers furnish risk disclosures to California residents.
Require disclosures by the cryptocurrency or digital asset provider to the customer so that both parties can agree on shared terms and conditions that are trusted and reliable. The risk disclosures should be written in plain, easy-to-understand language and address principles of consumer finance and protections as laid out in California's Consumer Financial Protection Law. Any disclosure should note that cryptocurrency trading can be extremely risky and may not always be appropriate, particularly with funds drawn from retirement savings, student loans, mortgages, emergency funds, or funds set aside for other purposes. It should also emphasize that cryptocurrency trading can lead to large and immediate financial losses. Additionally, all traders should sign an acknowledging receipt for the risk disclosure statement.

Risk disclosures should also address, at a minimum, the following:

1. Investment risks—Currently, providers are not required to disclose the volatility of cryptocurrency to potential consumers.
2. Transaction fees—Potential consumers run the risk of being charged a transaction fee even if their transaction does not go through.
3. Account access—If a consumer loses their password, there is no way to recover funds from their cryptocurrency account or wallet.

4. Reserves—Unlike the FDIC and NCUA, cryptocurrency and digital asset platforms do not have a deposit or reserves requirement. This means that a consumer is not guaranteed to withdraw their funds if the platform lacks liquidity.
5. Predatory or fraudulent actors—The US Federal Trade Commission says that fraud in the cryptocurrency market is "an alarmingly common method for scammers to get peoples' money[6]." Recently, the FBI identified fraud amounting to over $42 million[7] by cyber criminals contacting US investors, fraudulently claiming to offer legitimate cryptocurrency investment services, and convincing investors to download fraudulent mobile apps, which the cyber criminals have used with increasing success over time to defraud the investors of their cryptocurrency. At a minimum, it is necessary to identify fraudulent actors or unsustainable projects so that consumers know which providers to avoid.

All written materials should also be made easily available in multiple languages. Approximately 25.5 million people in the US have limited English language proficiency. Gaining a solid understanding about financial products and services, let alone completing complex financial documents, can be a daunting exercise when disclosures and other written materials are not readily available in non-English languages.

Recommendation 2: Call for greater oversight on stablecoins.
Stablecoins are cryptocurrencies that are pegged to a fiat currency and are designed to maintain a stable value. However, they are increasingly becoming volatile[8], and pegged currencies do not hold reserves, so any run on the stablecoin means a loss of stability. This can produce panic in the marketplace and a loss to consumers who purchased a purportedly stable asset.

Stablecoin providers should furnish clear disclosures about their management structure, any arrangements with affiliated companies, and the risk management activities related to periodic public reports. Stablecoin providers should also be insured by depository institutions and subject to the same supervision and regulatory requirements as other depository institutions.

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[6] Fletcher, E. Jun 3, 2022. "Reports show scammers cashing in on crypto craze." FTC Consumer Protection Data Spotlight.
[7] The Federal Bureau of Investigation. Jul 18, 2022. "Cyber Criminals Create Fraudulent Cryptocurrency Investment Applications to Defraud US Investors." Private Industry Notification 20220718-001.
[8] Mattackal, LP and M Singh. Jun 16, 2022. "Crypto volatility knocks more stablecoins off their peg". Reuters.

Recommendation 3: Ensure that providers who offer interest-earning depository accounts are licensed by the state.

Firms that are engaged in the business of buying and selling securities or commodities, or conducting transactions in securities for the account of others, must register as a securities or commodities broker or dealer, as per, but not limited to, California Financing Law (CPL). Firms that are engaged in currency exchange transactions, such as a check cashier or foreign exchange broker, must be licensed. Similar licensing requirements should apply to crypto platforms that exchange digital currencies, either with other digital assets or currencies or fiat currency. These providers should also be subject to the same requirements as broker-dealers who are regulated by the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA). The provider requirements should also include verification that anyone who sells a securities product has been tested and licensed and that every securities product advertisement is truthful and not misleading.

The DFPI should also ensure that these broker-dealers are not only licensed and subject to scrutiny, but also monitored for deceptive marketing practices that target low-to-moderate income communities and communities of color. Several countries are already responding[9] to a rising concern over ads that promote digital assets and the concern that investors can lose money over volatile price swings of digital currencies and assets.

Recommendation 4: Create seed funding for a rating agency to provide easy-to-understand, transparent, and trusted information to consumers about digital asset-related financial products and services.

A rating agency can help a potential consumer make educated decisions about investments by assigning a risk score to a crypto provider. They can also explain how likely the provider is to fulfill interest payments and repayments on the principal amount the consumer loaned them. A California-based rating agency can also educate investors on the long-term viability of a crypto asset and the company issuing it. There are several private actors that aim to serve as rating agencies, but the most robust and trusted source will be an agency that is subject to scrutiny by the public.

Digital assets have the potential to create an inclusive and equitable marketplace, while also helping low-to-moderate-income communities and communities of color build long-term wealth. But without robust consumer protections in place, digital currency and asset-related

[9] Browne, R. Mar 22, 2022. "UK watchdog puts 50 crypto companies on notice over 'misleading' ads." CNBC.

products and services can disproportionately affect financially vulnerable populations in California—and with zero repercussions to predatory providers.

Thank you for the opportunity to respond to the Invitation for Comments – Crypto Asset-Related Financial Products and Services from the DFPI. If you have any questions, please contact Tim Lucas, Vice President of Research and Analytics, at [redacted] or Radha Seshagiri, Director of Public Policy and Systems Change, at [redacted]. We appreciate your consideration and look forward to working together to increase economic stability and mobility and a robust marketplace for investors in our communities.

Sincerely,

[redacted]

Leigh Phillips
President & CEO, SaverLife
Chair, Consumer Financial Protection Bureau Consumer Advisory Board