stripe

August 5, 2022

Via email to regulations@dfpi.ca.gov

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

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

Dear Department of Financial Protection and Innovation:

Stripe appreciates the opportunity to provide input on the Department of Financial Protection and Innovation's (the "**Department**") invitation for comments on crypto asset-related financial products. Stripe was founded in California to make it easier for small businesses to accept payments through the internet. Today, millions of businesses around the world, from startups to public companies, use our software to accept and manage online payments. We work with regulators and governments worldwide to further our mission to build economic infrastructure for the internet and support entrepreneurship. Blockchain technology offers promises that are consistent with that mission, and those promises are recognized by Executive Order N-9-22 (the "**Executive Order**"). We are pleased to engage with the Department in developing guidance in accordance with the goals of the Executive Order.

The promises of blockchain technology will be undermined without effective regulation that protects consumers from harm. We are writing to recommend that (1) the Department adopt an *activity-focused* approach to regulating crypto asset business models rather than an asset-focused approach and (2) the Department use its authorities under the Money Transmission Act to supervise crypto asset activities meeting the definition of money transmission.

1. **The Department should adopt an activity-focused approach.**

Crypto asset business models frequently have traditional financial services analogues that have long-established regulatory frameworks tailored to their unique risks and benefits. A number of business models have proliferated around blockchain technology, including custodial, trading, investment, fundraising, lending, and payments services. Their traditional financial services analogues each pose distinct risks and benefits to consumers and to the financial system, and so are often regulated under different laws and sometimes by different agencies. Applying the same sets of rules to, for example, the lending and investment services industries could stifle innovation in one and leave consumers exposed in the other.

An activity-focused approach uses the activity performed with the crypto asset, rather than the fact that a crypto asset is involved, as the starting point in determining the application of appropriate rules. Under this approach, the Department would consider:

- First, whether the Department already administers a licensing regime for the business model were it conducted with non-crypto assets; and
- Second, if the answer is yes, whether that licensing regime provides the Department with appropriate tools to supervise the business model when it is conducted with crypto assets.

We believe this approach is necessary to satisfy the Executive Order's goals of fostering responsible innovation. Identifying where crypto asset business models pose risks similar to traditional financial activities makes it possible to subject those business models to similar regulatory outcomes, reducing redundancy and duplication of regulatory frameworks that may discourage well-regulated, traditional market participants from providing crypto asset services.[1] While the California Consumer Financial Protection Law (the "**CCFPL**") equips the Department with powerful tools to oversee previously unregulated activity, some crypto asset business models may fit neatly within licensing regimes already administered by the Department. Conversely, the Department may find that in certain circumstances, the use of crypto assets poses unique risks that cannot be addressed solely (or at all) through licensing regimes it already administers. In those circumstances, use of authorities under the CCFPL may be appropriate.

2. **The Department should supervise money transmission activities through the Money Transmission Act.**

As an application of the activity-focused approach, we believe that the Department should take steps to supervise money transmission activity through the Money Transmission Act where the monetary value received or transmitted is a crypto asset. The Money Transmission Act is designed to facilitate online commerce,[2] and is agnostic to the assets used as media of exchange in online commerce transactions.[3] The Money Transmission Act today covers payments transactions involving California persons regardless of whether those transactions take place entirely in U.S. dollars, involve conversions into or from non-U.S. currencies, or take place entirely in non-U.S. currencies. Similarly, the Money Transmission act could be extended to cover money transmission transactions involving crypto assets, including fiat-to-crypto, crypto-to-fiat, or crypto-to-crypto transmissions from one person to another.

The Money Transmission Act provides the Department with appropriate tools to supervise crypto asset transmission activity and protect consumers from harm. Remittance and payment processing services are used to transmit monetary value. Consumers of crypto asset transmission services bear the risk that their service provider will fail to deliver their monetary value, which is identical to the risk borne by consumers of fiat money transmission services. The Money Transmission Act contains several safeguards against this risk, including broad examination authorities and licensee officer and director character and fitness

---

[1] See, e.g., Financial Stability Board, *FSB Statement on International Regulation and Supervision of Crypto-asset Activities* (July 11, 2022*)*, *available at* https://www.fsb.org/2022/07/fsb-statement-on-international-regulation-and-supervision-of-crypto-asset-activities/, for a discussion of these principles.
[2] See Cal. Fin. Code § 2001 ("The legislature finds and declares all of the following: (a) …technological advances are occurring in the provision of money transmission services, which have expanded money transmission to include the use of mobile applications, alternative point of sale systems, and other consumer payment systems.").
[3] See Cal. Fin. Code § 2003(o) ("'Monetary value' means a medium of exchange, whether or not redeemable in money").

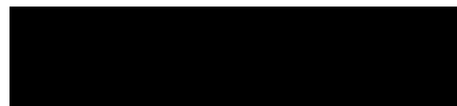
qualifications, a minimum net worth requirement, and a requirement to maintain high-quality, liquid assets with an aggregate market value equal to or greater than customer obligations. Moreover, the Department has broad authority under the Money Transmission Act to impose additional requirements on licensees engaging in crypto asset transmission activity as needed to address risks that may be unique to blockchain technology in payments services, including cybersecurity and custody risks.[4]

The Department could adopt this recommendation by establishing the position that the definition of monetary value in the Money Transmission Act can include crypto assets. Doing so would bring California in line with the approach adopted by other U.S. states,[5] benefiting companies operating nationwide with clarity and uniformity, while bringing California consumers the protections of a well-established prudential regulatory regime. Consistent with the Executive Order's goals, it would also not interfere with a harmonized state-federal approach. Instead, it would leverage a regulatory framework that already exists in harmony with other state and federal laws. Finally, it would leave space for the Department to make use of the CCFPL to address risks unique to crypto asset business models that cannot be addressed through licensing regimes already administered by the Department.

* * * *

We look forward to continuing to work with the Department on developing guidance for crypto asset-related financial products and services. Please do not hesitate to contact us if you would like to discuss our views on the invitation for comments in more detail.

Sincerely,



Katherine M. Carroll
Global Head of Public Policy

---

[4] See Cal. Fin. Code § 2036 ("The commissioner may impose any authorization, approval, license, or order issued pursuant to this division any conditions that are necessary for the safety and soundness of the licensee, or reasonable or necessary to maintain or enhance consumer protection."). See also Cal. Fin. Code § 2040(c) (providing the Department with authority to establish minimum net worth requirements at any amount necessary, taking into consideration, among other things, the amount, nature, quality, and liquidity of its assets as well as any other factor the commissioner considers relevant).

[5] See, e.g., Wash. Rev. Code Ann. § 19.230.010(18); Connecticut Department of Banking, *Virtual Currency Money Transmission FAQs*, available at https://portal.ct.gov/DOB/Consumer-Credit-Licensing-Info/Consumer-Credit-Licensing-Information/Virtual-Currency-MTRA-FAQs; North Carolina Officer of the Commissioner of Banks, *Money Transmitter Frequently Asked Questions*, available at https://nccob nc.gov/financial-institutions/money-transmitters/money-transmitter-frequently-asked-questions#IsthetransmissionofvirtualcurrencyregulatedundertheNCMTA-448.