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Submitted Online

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

To Whom It May Concern:

The Third Party Payment Processors Association ("TPPPA") is grateful for the opportunity to provide feedback to the State of California Department of Financial Protection and Innovation ("DFPI") regarding its invitation for comments on Crypto Asset-Related Financial Products and Services.

The TPPPA is a national not-for-profit industry association representing third-party payment processors ("TPPPs") and banks that sponsor TPPPs in various payments networks, along with other companies engaged in payments. The TPPPA was formed in the summer of 2013 to advocate on behalf of our members and the payments industry, and to create, foster and promote industry best practices in compliance in the payment processing industry. The TPPPA's best practices are known as the TPPPA Compliance Management System ("TPPPA CMS)". The TPPPA CMS considers third-party payment processors of all types (Card, ACH, Check, etc.) to be third-party service providers of the banks that sponsor them into the various payment networks. This concept is consistent with the Third-Party Risk Management guidance of the Federal Banking Regulators and is articulated in some of the payment system rules. As such, the TPPPA CMS is built upon a foundation of bank guidance as well as bank and corporate guidance by the Consumer Financial Protection Bureau and the Department of Justice related to Compliance Management System guidance.

The TPPPA appreciates and supports the efforts of the DPFI to harmonize federal and California approaches to crypto asset-related products and services and to balance the benefits and risks to consumers. We are particularly interested in, and supportive of states' efforts to align with federal financial laws and regulations across the country.

The Focus of Our Response:

The TPPPA membership consists primarily of payment processors and banks that sponsor payment processors into the various payment networks. Our members typically provide a variety of payment options to a variety of different industry segments across the United States. As such, our feedback will be focused on those aspects of this rulemaking that provide consumer protection and anti-money laundering requirements in a consistent manner across industries and geographies throughout the United States.

The Impact of Inconsistent Requirements:

<u>Impact to Consumers</u>:

Consumers that are purchasing products and services online (which has become more and more prevalent since COVID-19 and unlikely to revert), are unaware of the messy tangle of different state and federal requirements on companies that provide financial services. Consumers expect that "the rules are the rules" and when states deviate from each other and from the federal laws, rules, and regulations, it can cause a great deal of confusion and frustration on the part of consumers who are unaware of the many nuances.

Unfortunately, the requirements that the California DFPI seeks to impose on companies that reside outside the state (when dealing with California resident consumers), often greatly exceed those of federal requirements and those of other states. This creates great confusion to consumers and companies, and results in considerably greater compliance costs for these companies, which, of course, ultimately increases the cost of products and services to California consumers that are already struggling with inflation.

<u>Impact to Small Business</u>:

Governor Newsom's Executive Order N-9-22, acknowledged regulatory uncertainty stating:

> *"**WHEREAS** notwithstanding these steps, responsible innovation has been encumbered by regulatory uncertainty, especially with regard to federal law, which has principal authority over financial instruments and transactions that are inherently interstate …"*

The complexity of 50+ different regulatory regimes greatly impact small-to-midsize businesses, including those operating inside California. California has one of the most onerous regulatory and reporting requirements in the country, particularly since the formation of the DPFI. These excess requirements, which generally involve complex computer programming and reporting changes, as well as larger compliance functions, add considerable costs to small-to-midsize businesses. This trend naturally results in many of these smaller companies being forced to sell, or to be assimilated by large companies. This has a direct impact on competition, which ultimately impacts all consumers, including those residing in California.

The TPPPA is encouraged by California's stated understanding of the consequences of regulatory uncertainty and the impact to interstate commerce. We applaud the stated aspiration to strive to create laws that do not further encumber regulatory uncertainty.

Impact to Third-Party Payment Processors and Licensing Requirements:

Third-party payment processors that are sponsored into the various payment networks by U.S. banks are acting as third-party service providers to the banks that sponsor them. As such, this type of payment company is acting as an agent of the sponsoring bank to acquire merchants, collect and format payment data to facilitate automated payment processing, and conduct due diligence and monitoring of the merchants on behalf of the sponsoring bank. While the bank may utilize a third-party payment processor for these types of activities, the bank remains fully responsible for the conduct of all its third-party service providers. The payments that result from these arrangements are transmitted and settled by the banks. Therefore, these companies are utilizing the license of the banks that sponsor them into the networks and are exempt from money transmission requirements at a federal level and should likewise be exempt from licensing requirements at a state level.

When states deviate from this federal model, it creates greater confusion and uncertainty, and significantly increases the cost of providing payment processing services. The increase in cost is ultimately passed down to merchants (that are generally small-to-midsize businesses), and is ultimately borne by consumers in the form of higher prices for goods and services.

Crypto Rules and Money Transmission:

The TPPPA believes that the federal approach to regulating persons administering, exchanging, or using virtual currencies to be sound, practical, and fair. Additionally, many of the states that have already, or are in the processes of drafting regulations for crypto asset-related financial products and services, have leveraged their money transmission laws. We encourage California to do the same in its effort to address regulatory confusion and uncertainty. We also encourage California to continue its efforts to work along with its sister states under the guidance of the Conference of State Bank Supervisors (CSBS) and to work collectively to keep its money transmission model laws up to date.

Final Thoughts:

In closing, the TPPPA feels strongly that those people intent upon committing fraud are not going to be deterred by laws and rules. Creating more and more rules, in an effort to stop the smaller percentage of companies that are bad actors, creates an overburdensome and cumbersome process for the majority of companies that attempt to follow the rules, resulting in unduly burdening legitimate business activity. It also drives up the costs of compliance for these companies, which is ultimately passed on to the consumers who are already struggling from inflation. The TPPPA urges the DPFI to use this opportunity to create greater clarity and consistency with other states and federal law, and to avoid adding overly complicated and costly compliance requirements that burden small business, impacts competition and increases the cost of acquiring goods and services to the very consumers and businesses that the State of California is seeking to protect.

Thank you for the opportunity to respond. We hope our comments help the DFPI to balance its efforts to protect consumers, promote business and innovation, and to reduce excessive and confusing regulatory burden on legitimate business activity. Please feel free to reach out with any questions.

Sincerely,

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Marsha Jones
President
Third Party Payment Processors Association
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