

January 12, 2024

Commissioner Clothilde V. Hewlett
Commissioner, Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, CA 95814
regulations@dfpi.ca.gov

Re: PRO 02-23

Commissioner Hewlett,

On behalf of the Electronic Transactions Association (ETA), the leading trade association for the payments industry, thank you for the opportunity to share preliminary comment related to the Department of Financial Protection and Innovation's (DFPI) promulgation of rules related the digital financial assets law.

ETA supports California state supervision of digital asset businesses and robust consumer protections for customers of those businesses. A well-regulated digital asset industry, subject to harmonious state and federal standards, is key to promoting healthy innovation in financial services and enhancing existing payments technologies to make them faster, stronger, and more robust. Our initial comment on specific numbered topics related to the Digital Financial Assets Law (DFAL) license application and licensure requirements are below:

2. Financial Code section 3202, subdivision (a)(3) requires the license application to be accompanied by a nonrefundable fee to cover the reasonable costs of application review. Additionally, Financial Code section 3203, subdivision (e) requires the applicant to pay the reasonable costs of the DFPI's investigation under section 3203, subdivision (b).

a. Are there aspects of the costs and fees in the Financial Code section 3203 that should be clarified through rulemaking?

ETA proposes using a uniform license fee used by other states to provide predictability for industry participants and funding benefits for the DFPI. The application fees for similar virtual currency licensures in New York and Louisiana are \$5,000, respectively. ETA proposes that the DFPI utilize the same \$5,000 fee structure used by other states requiring licensure. A uniform application fee across states also promotes fairness among industry participants, ensuring that higher fees do not unfairly burden small businesses than larger competitors. Moreover, a fixed application fee can help generate revenue for the state of California without causing significant financial strain on businesses seeking licensure. A consistent application fee will help fund regulatory oversight and enforcement efforts for the virtual currency market, ultimately protecting consumers from potential fraud or other illegal activities while providing funding for the timely processing of applications for licensure in California.

3 - 5. What factors should the DFPI consider in determining the dollar amount of surety bond or trust account it may require under Financial Code section 3207, subdivision (a)? Should the DFPI require a minimum amount of surety bond or trust account? Should surety bond or trust account amounts vary by the type of activity requiring licensure?

ETA encourages that requirements related to surety bonds reflect minimum risk, especially considering that licensees will be required to hold like-kind assets that directly protect consumers from risk. In this regard,

ETA suggests using the same formula followed in New York, which has been proven effective in minimizing risks associated with surety bonds. New York applies the following requirement:

Surety Bond or Trust Account Authorization: Each licensee shall maintain a surety bond or trust account in United States dollars for the benefit of its customers in such form and amount as is acceptable to the Superintendent for the protection of the licensee's customers. Upload and mail documentation showing compliance in the form found at Virtual Currency Licensee Bond Requirement, or proof of establishment of a trust account. Unless otherwise specified by NY-DFS, the current NY-DFS requirement for the surety bond or trust account is \$500,000 for each Virtual Currency Business Activity License. (23 NYCRR Part 500)

13 - 14. Are there any additional matters related to the DFAL license application, licensure requirements, or stablecoin approval that the DFPI should consider when proposing regulations? What future rulemaking actions related to the administration of the DFAL should the DFPI consider, and why?

ETA recommends that the DFPI, in all DFAL-related rulemaking actions, consider distinctions in digital asset business models and the risks they pose rather than adopting a “one-size-fits-all” approach. Crypto asset business models frequently have analogs of traditional financial services with long-established regulatory frameworks tailored to their unique risks and benefits.

Several business models have proliferated around blockchain technology, including custodial, trading, investment, fundraising, lending, and payment services. Their traditional financial services analogs pose distinct risks and benefits to consumers and the financial system, so they are often regulated under different laws and sometimes by other agencies. Applying the same rules to, for example, retail brokerage services permitting trading (and involving margin) across a wide range of assets and payment activities solely involving stablecoins could stifle innovation and leave consumers exposed in the other. These activities could merit different capital standards and involve different asset-safeguarding considerations. Accordingly, ETA recommends that the DFPI consider these distinctions when relevant in rulemaking actions.

* * *

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President of Government Affairs Scott Talbott at .

Respectfully Submitted,

Brian Yates
Senior Director, State Government Affairs
Electronic Transactions Association
202.677.7714 |