

State of California
Department of Financial Protection and Innovation
Attn: Legal Division
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Sacramento, CA 95834

regulations@dfpi.ca.gov

BITCOIN DEPOT
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January 12, 2024

Sent via email

RE: CA SB 401 / AB 39 - Bitcoin Depot Comments - PRO 02-23

To Whom it May Concern:

On November 30, 2023, the California Department of Financial Protection and Innovation (“DFPI”) issued an *Invitation For Comments on Proposed Application-Related Rulemaking Under the Digital Financial Assets Law (PRO 02.23)*. Bitcoin Depot Operating, LLC, a Delaware limited liability company doing business as “Bitcoin Depot” (the “Company”) that is headquartered in Georgia, is offering comments on the Digital Financial Assets Law (DFAL), which was created when California enacted SB401 and AB 39 on October 13, 2023. Bitcoin Depot is highly supportive of a strong and effective licensing framework as set forth in AB 39, with most of our comments addressing potential opportunities for improvements within SB 401.

Bitcoin Depot’s Primary Business Model

The Company’s primary business model is to buy and sell Bitcoin at close to 7,000, with approximately 360 in California. Company-owned Automated Teller Machines (BTMs) kiosks throughout the United States (and Canada) that are installed at various locations, such as convenience stores and gas stations. Nearly all of the kiosks have only the ability to sell Bitcoin to customers, though a limited number of the kiosks offer customers the ability to sell Bitcoin to the Company, none of which are located in California. For an up-to-date count of kiosks and locations, please refer to the Company’s website (www.bitcoinodepot.com/locations).

The Company’s BTMs offer customers the option of exchanging fiat currency for Bitcoin. The Company employs its own software platform called Bitaccess to determine the applicable exchange rate at the time of the transaction, and the Company charges a percentage markup plus a flat fee.

Bitcoin Depot’s Company History

The Company was established in 2016 and has grown to be the largest cryptocurrency kiosk network in the United States by investing in people, technology, and processes that support a culture of compliance. The Company became a public entity on June 30, 2023, and trades on the NASDAQ under the ticker symbol BTM. By virtue of being a public company, the Company is fully accountable to the Securities & Exchange Commission (“SEC”). Additionally, the Company is a registered Money Services Business (“MSB”) with the Financial Crimes Enforcement Network (“FinCEN”) and its primary regulator, the Internal Revenue Service (“IRS”).

Bitcoin Depot’s Mature Compliance Program

The Company’s Chief Compliance Officer directly reports to the Company’s Chief Executive Officer (“CEO”), with dotted line reporting to the Chief Operating Officer (“COO”) and the Board of Directors. The



program is fully documented in policies and procedures and is reviewed annually by an independent third-party auditor.

- Bank Secrecy Act (BSA) / Anti-Money Laundering (AML) / Office of Foreign Assets Control (OFAC) Compliance
 - The Company's Chief Compliance Officer, Mark Smalley, has over 25 years of applicable legal and compliance experience.
 - Three dedicated AML compliance teams - one focused on customer diligence, one focused on transaction monitoring and investigations, and one focused on law enforcement relations and education.
 - Dedicated analysts reviewing Know Your Customer (KYC), OFAC, sanctions, and Politically Exposed Person (PEP) alerts.
 - Full compliance with all applicable federal, state, and local laws, including suspicious activity reporting, currency transaction reporting, and funds travel rule compliance.

- Privacy and Consumer Compliance
 - Dedicated compliance resources to ensure compliance with all applicable consumer protection laws, including complaints, funds availability, abandoned property, and refunds.
 - Fully compliant with all applicable federal and state privacy laws, including contract provisions, data accessibility, and opt-in / opt-out provisions.

- Licensing & Registration
 - Registered with FinCEN as an MSB.
 - Registered with the Secretary of State in every state, the District of Columbia and Puerto Rico.
 - For state money transmitter licenses, the Company is either licensed in the state or periodically confirms with the state that its no-action position remains unchanged. Currently, the company has approximately 15 state money transmitter or virtual currency licenses. Applications are in process for an additional 30 states.

- Enterprise Risk Management
 - Comprehensive Enterprise-wide risk assessments including AML / BSA / OFAC
 - Fully operational self-testing program
 - Enterprise-wide compliance training program including Anti-Money Laundering, OFAC and Sanctions, Know Your Customer and Enhanced Due Diligence, Consumer and Privacy, and Corporate Ethics and Conduct.
 - Business Resiliency and Third Party Risk Management.

- Information and Data Security
 - Policies for Bitcoin Depot are designed to comply with state licensing, General Data Protection Regulation (GDPR), California Consumer Privacy Act (CCPA), and Security Operations Center (SOC) compliance, and our desire is to be the most secure and trusted cryptocurrency operator in the industry.
 - Security - Protecting our environment and data is of the highest priority. Our network and endpoints are secured with an endpoint security agent (Antivirus, Malware and Data Loss Protection (DLP), and patch management), email security, intrusion detection and prevention, User access and roles, and centralized monitoring and alerts systems.

- Data Protection - Protecting Personal Identifiable Information (PII) data is a requirement, and Bitcoin Depot has implemented steps to protect sensitive data in transit and at rest (stored in database).
- Availability - Servicing our customers is also a high priority. Our backend process and architecture are designed to provide high availability and uptime and processing our customer transactions in a timely and efficient manner.

Bitcoin Depot's Monitoring Process and Consumer Safeguarding

The Company employs the most state-of-the-art and sophisticated transaction monitoring and case management software to detect and prevent financial crimes. Additionally, the Company utilizes third-party blockchain analytics services to identify higher-risk and criminal wallets. The Company has implemented consumer safeguards. More specifically, the Company would state the following:

- The Company has implemented a number of customer-facing safeguards to warn about scam-related activity in the form of hard copy warnings physically present on the kiosk as well as online screen notices several of which require the customer to make affirmative attestations before moving past the screen, and short text messages. Copies of these warning messages are attached at the end of this letter.
- The Company does not host customer wallets, nor does it assume custody of customer funds.
- The Company only sells Bitcoin, which has been labeled a commodity by various regulatory agencies. The Company does not sell or provide services for any other cryptocurrency.
- Prior to completing a transaction, the customer must consent to the Company's publicly available Terms & Conditions. Moreover, the Terms & Conditions state that the customer is required to send the Bitcoin only to their own wallet.
- The Company has begun linking customer wallet addresses to individual user accounts along with requiring an affirmative wallet ownership attestation to block Bitcoin from being sent to third parties directly from a customer completing a transaction at the kiosk. While the Company has implemented these practices and works on a best-efforts basis to prevent a customer at the kiosk from sending Bitcoin directly to a third party during a transaction instead of their own Bitcoin wallet, it can still occur in a very small percentage of the company's transactions.

Response:

I. License application form and related fees (Fin. Code, § 3203)

1. *Section 3203 requires the license application to include "any other information" the DFPI reasonably requires by rule. In addition to the information that is listed in the law, what other information should the application include?*

The Company encourages alignment with comparable licensees under DFPI jurisdiction, including, most appropriately, those that hold a Money Transmission License and does not believe any additional information should be required at this point in time.

2. *Financial Code section 3203, 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 Financial Code section 3203 that should be clarified through rulemaking?*

Fees typically include application fees, annual renewal fees, examination fees, and fees assessed for non-compliance. The Company believes that the DFPI should survey other states and adopt fees that are reasonable and not excessive. Application fees should be higher than renewal fees as the DFPI would complete a more comprehensive review at



the time of application; renewal fees should be approximately 20% of initial application fees.

The DFPI should participate in combined examinations with other states where licensees hold either Money Transmitter licenses or substantially similar Virtual Currency licenses. On-site fieldwork should be limited to reduce costs.

Penalty fees should be delineated between intentional, flagrant violations and administrative errors such as late filings or inaccuracies in kiosk registrations. The latter should have nominal fees that should not be punitive in nature.

- b. Are there factors the DFPI should consider in determining these reasonable costs and fees? For example, should the DFPI charge every applicant the same application fee, or charge different fees depending on the type or complexity of the application? Where applicable, please provide information about the methodology and impact of costs and fees in other state or federal regulatory environments.*

Fees should be reasonable and clear at the outset through the rulemaking process; DFPI should implement a flat fee for all applicants.

II. Surety bond or trust account (Fin. Code, § 3207, subd. (a))

- 3. What factors should the DFPI consider in determining the dollar amount of surety bond or trust account it may require under section 3207?*

The DFPI should never make establishing a Trust Account as a requirement unless the licensee maintains control or custody over customer funds in the common usage of these terms. Financial institutions will not establish trust accounts for kiosk operators to service armored cash processing because the funds belong to the kiosk operator at the time of the transaction.

This leaves securing a surety bond as one of the only options for operators who need to comply with Section 3207. Surety bond amounts should be determined based on the applicant's risk profile and exposure to California customers. This can include quarterly transaction volume and number of California users.

- 4. Should the DFPI require a minimum amount of surety bond or trust account? Please explain.*

The DFPI should align surety bond requirements similar to section 2037(e) of the California Financial Code's Money Transmission Act. Which are set at two hundred fifty thousand dollars (\$250,000) minimum surety bond requirement and no more than seven million dollars (\$7,000,000).

- 5. Should surety bond or trust account amounts vary by the type of activity requiring licensure? Please explain.*

Surety bond amounts should be determined based on the applicant's risk profile and exposure to California customers. This can include quarterly transaction volume and number of California users.

- 6. How should specific activity requirements provided for, such as the custody requirements of section 3503 or the reserve requirements of section 3601, impact surety bond or trust account amounts?*

There should be no additional capital requirements if a surety bond is in place.



III. Capital (Fin. Code, § 3207, subd. (b) & (c))

7. *Section 3207 requires a licensee to maintain capital “in an amount and form as [DFPI] determines is sufficient to ensure the financial integrity of the licensee and its ongoing operations based on an assessment of the specific risks applicable to the licensee.” It provides nine factors the DFPI may, but is not required to, consider when determining the minimum amount of capital required of a licensee. Are the factors provided sufficient, or are additional factors needed and if so, what should those potential additional factors be and why?*

An applicant and licensee shall maintain at all times a net worth of \$2,000,000.

8. *Should capital minimums vary by the type of activity requiring licensure?*

There should be no variations in minimal net worth requirements.

IV. Stablecoin approval process (Fin. Code, § 3603)

9. *Under Financial Code section 3603, subdivision (b)(2)(B), in determining whether to approve a stablecoin the Commissioner must consider “[t]he amount, nature, and quality of assets owned or held by the issuer of the stablecoin that may be used to fund any redemption requests from residents.” Subdivision (a)(2) of Financial Code section 3601 requires that the “issuer of the stablecoin at all times own[] eligible securities having an aggregate market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding stablecoins issued or sold.” Subdivision (b)(1) of Financial Code section 3601 specifies that “eligible securities” means those described in subdivision (b) of Financial Code section 2082 or foreign currency eligible securities described in subdivision (c) of section 2082.*

- a. *Given that Financial Code section 3601 already restricts the types of assets that qualify as eligible securities (and can therefore be used to fund redemption requests) that an issuer may hold to those assets described in Financial Code section 2082, are there other criteria that the DFPI should consider in evaluating “quality of assets” under Financial Code section 3603, subdivision (b)(2)(B)?*

The Company does not deal in stablecoins and has no comment.

- b. *Regarding the amount and nature of assets, is there particular information that the DFPI should consider?*

The Company does not deal in stablecoins and has no comment.

10. *Under Financial Code section 3603, subdivision (b)(2)(C), in determining whether to approve a stablecoin the Commissioner must consider “[a]ny risks related to how the assets described in subparagraph (B) are owned or held by the issuer that may impair the ability of the issuer of the stablecoin to meet any redemption requests from residents.” Are there particular risks regarding how assets are owned or held that the DFPI should consider?*

The Company does not deal in stablecoins and has no comment.

11. *Under Financial Code section 3603, subdivision (b)(2)(F), in determining whether to approve a stablecoin, the Commissioner must consider “any other factors the commissioner deems material to making their determination.”*

- a. *To what extent should the DFPI consider the amount and type or quality of the issuer’s other liabilities before approving a stablecoin?*



The Company does not deal in stablecoins and has no comment.

- b. *What “other factors” should the DFPI consider?*

The Company does not deal in stablecoins and has no comment.

- c. *Should the DFPI consider whether the stablecoin is listed on the “Greenlist” maintained by the New York State Department of Financial Services? Please explain why or why not.*

The Company does not deal in stablecoins and has no comment.

12. *Under Financial Code section 3603, subdivision (c), the Commissioner may impose conditions, restrictions, or other requirements on an issuer or a covered person as a condition of approval of a stablecoin.*

- a. *Are there restrictions or requirements that should be imposed generally on all issuers or covered persons? If so, why?*

The Company does not deal in stablecoins and has no comment.

- b. *Should there be a general requirement that all issuers certify that they meet requirements similar to those for covered exchanges under Financial Code section 3505, subdivision (a)?*

The Company does not deal in stablecoins and has no comment.

V. Additional Comments

13. *Are there any additional matters related to the DFAL license application, licensure requirements, or stablecoin approval that the DFPI should consider when proposing regulations?*

- **Daily Limits**

- Currently, the DFAL requires companies to establish a \$1000 daily virtual currency limit. Placing an arbitrary deposit and withdrawal limit on a customer may decrease customer protection and the ability to detect malicious actors. As customers increase their purchases, cryptocurrency kiosk companies require additional forms of identification and authentication. Imposing arbitrary limits on a transaction amount undermines the additional authentication and verification steps and instead encourages bad actors to spread transactions across multiple companies in smaller amounts, potentially obscuring their activities.

Additionally, the \$1000 daily limit skirts federal reporting requirements - Currency Exchange Record (“CER”) at \$1,000, Monetary Instrument Log (“MIL”) at \$3,000, Funds Travel Rule (“FTR”) at \$3,000, and Currency Transaction Report (“CTR”) at \$10,000 - which translates routine reporting obligations into obfuscation. Beyond initial transaction hesitation of a new user, what legitimate purpose does the current fulsome transaction limit serve?

In addition to dollar value reporting, pertinent activity reporting is also impacted; the proposed transaction limitation will encourage bad actors to structure transactions in a manner that evades federal reporting requirements. Federal regulations have strict reporting guidelines, including filing a SAR for any suspicious transaction over \$2,000.

This creates a database where law enforcement can review and quickly request supporting documentation regarding transactions, digital wallet addresses, correspondence, and KYC identification. See 31 CFR § 1022.320. The DFAL will lead to numerous transactions spread across multiple companies, preventing any single company from reporting essential information to law enforcement.

- Fee Caps

- DFAL allows the DFPI to set fee limits without any certainty or consideration of operating expenses. Operating a cryptocurrency kiosk has unique costs, including purchasing, installing, and maintaining the kiosk equipment. There are also recurring costs, including rent to small businesses hosting a kiosk, insurance, legal fees, bank fees, blockchain access fees, cash management, armored vehicles, monitoring and surveillance, BSA / AML compliance, OFAC compliance, cybersecurity, fraud detection, and customer support. California must balance its desire to have the most reputable BTM operators in the state with higher costs of compliance and consumer protection.

BTM companies must maintain an inventory of cryptocurrency offerings that could fluctuate as much as 10-30% on any given day. While cryptocurrency exchanges charge a lower fee, they do not offer customers the same convenience and ease of using a kiosk at their local convenience store to make a voluntary purchase of cryptocurrency with cash. In fact, exchanges do not offer customers who want to buy cryptocurrency with cash any option — which also means exchanges have lower operational costs and can charge lower fees than crypto kiosk companies. This is because exchanges do not have hardware, cash management fees, maintenance and repair costs, wireless internet, insurance on hardware, rental payments to stores, or other operational expenses.

- Unbanked / Underbanked Accessibility

- Stereotypical and anecdotal stories have painted the BTM industry as targeting marginalized individuals in lower-income neighborhoods. However, BTM operators such as our Company can provide accurate data points that our BTM kiosks are located in a wide variety of neighborhoods, including higher-income locations such as Huntington Beach, Calabasas, and Napa.

Individuals who have used the Company's services have self-designated that the primary purpose for purchasing cryptocurrency has been for sending funds to family members abroad, online payments and purchases, remittances and money transfers, and investment or store of value. Please see the attached graphic at the end of this letter. Individuals choosing to use alternate banking methods should not suffer additional "taxation" in the form of "kiosk-shopping" to multiple locations to complete necessary transactions. The DFAL does not appear to have considered this portion of the population, but only the small subset of anecdotal stories of the sponsor's inner circle. Moreover, widespread dialogue should be targeted to the majority of individuals who benefit from the BTM industry and not the minor subset of individuals who have unfortunately been scammed.

- Independent Compliance Officer Function

- The owner of a virtual currency kiosk business shall provide evidence of a designation of a full-time compliance officer, and no person owning more than 20% interest in the virtual currency kiosk business shall act as the compliance officer. The day-to-day compliance responsibilities must be completed by full-time employees.

- Live Customer Support

The virtual currency kiosk business shall maintain live customer support at a minimum on Monday through Friday between 8AM PST and 10PM PST.



14. *What future rulemaking actions related to the administration of the DFAL should the DFPI consider, and why?*

- California Economic Outgrowth
 - Crypto kiosk companies provide numerous economic advantages to California businesses. In 2023 alone, Bitcoin Depot paid \$2,700,000 directly to businesses to host their kiosks. These hosts largely consist of small minority-owned businesses. In addition, Bitcoin Depot paid their armored car services \$760,000 (Garda received \$600,000 to service 412 kiosks; Loomis received \$160,000 to service 147 kiosks). DFAL would put these payments at risk as BTM kiosk companies may be unable to continue their operations. Since the \$1,000 daily transaction limit was implemented on January 1, 2024, the Company has seen a 70% decline in sales through the first ten days of the year from \$1,200,000 in 2023 to \$400,000 in 2024. The Company believes that a 28% fee cap and \$15,000 daily transaction limit support economic growth in California while allowing kiosk operators to invest in meaningful compliance efforts.
- Heavily Regulated Operators
 - DFPI should consider exemptions to reporting requirements or examinations for entities that are publicly traded on the NYSE or NASDAQ. Additionally, DFPI should consider exemptions for entities that maintain the NY Bitlicense or have Money Transmitter licenses or similarly equivalent virtual currency licenses in a number of other states.

Bitcoin Depot is proud of the company that we have established and the services we provide to consumers in the United States, Canada, and California. California should be, likewise, excited to have companies like Bitcoin Depot doing business within the state. Bitcoin Depot has established itself as a key player in an emerging market that has balanced economic growth with Compliance and Consumer Protection. Our Company wants California to regulate this space to encourage the good actors to flourish while weeding out the bad actors through regulation.

Bitcoin Depot respectfully requests the opportunity to have additional conversations with the Legislature to allow for a better understanding of a complex and non-traditional technology that is elective yet appealing to many California citizens looking to diversify their assets and financial tools. We look forward to additional conversations, and please do not hesitate to contact me with any questions.

Sincerely,

/S/ Mark J. Smalley

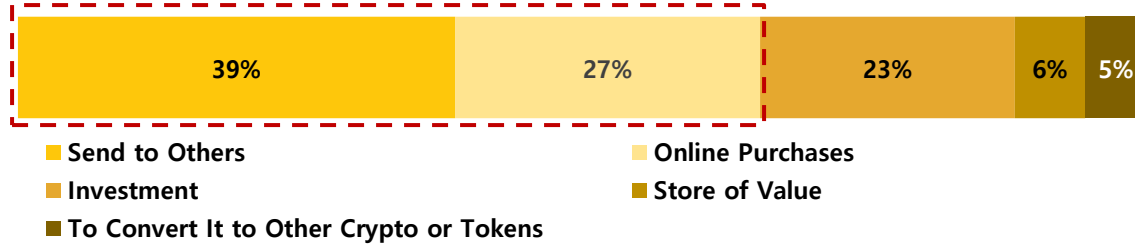
Mark J. Smalley,
Chief Compliance Officer

Overview of Our Users

User Survey Data ⁽¹⁾

Customer Use Cases of Bitcoin

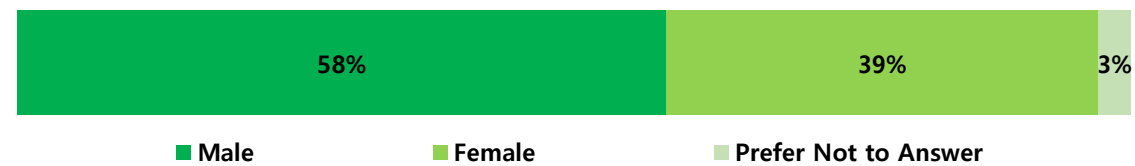
~2/3 of Our Users Are Mainly Using Bitcoin for Remittance and Online Purchases



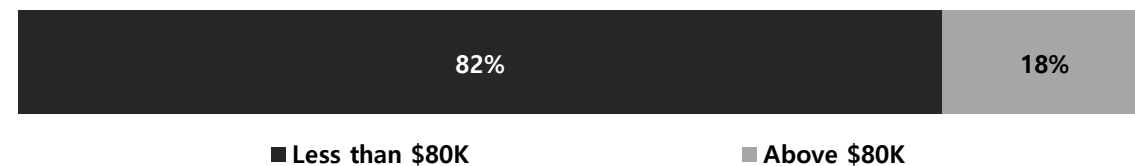
Age



Gender

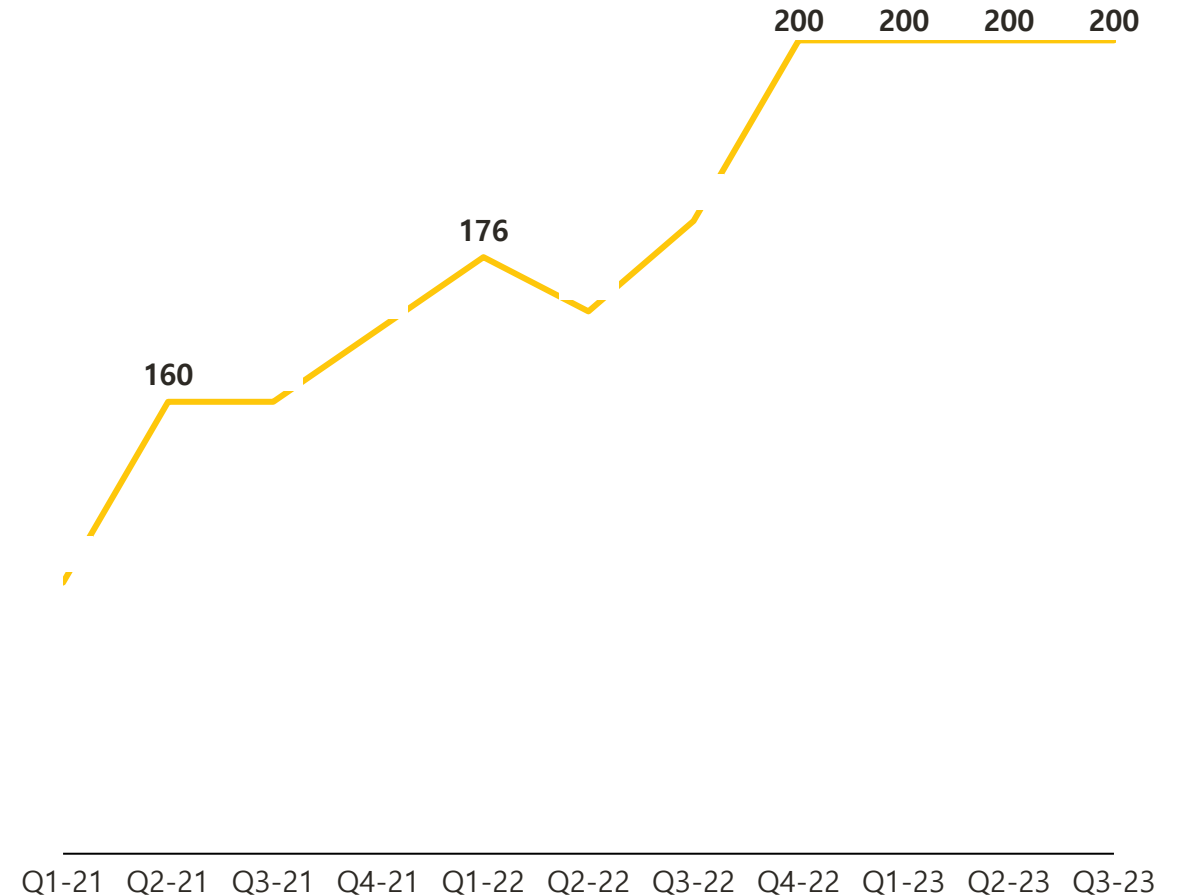


Income Level



User Engagements

Median Kiosk Transaction Size



⁽¹⁾ Based on our user survey data as of December 15, 2022, with start date of August 15, 2022. n=625 except question regarding gender, in which case n=616.

ARE YOU BEING SCAMMED?

DO NOT BUY BITCOIN FOR:

IRS
OR
UTILITY
PAYMENTS

MILITARY
PERSONNEL

SOMEONE WHO SAYS
YOU ARE BEING
INVESTIGATED

SOMEONE YOU
HAVE NOT
MET IN
PERSON

REMOTE, UNSOLICITED
TECHNOLOGY
ASSISTANCE

SOMEONE ELSE
USING THEIR
PHONE NUMBER

STORE EMPLOYEE
MACHINE TEST

ONLINE ROMANCE
PARTNERS

If you have any questions or are unsure of the purpose of your transaction please call our Customer Support line at 678-435-9604. We'll be happy to assist you.



WARNING: Have you received a phone call from someone demanding payment in Bitcoin? **THIS IS LIKELY A SCAM.** All Bitcoin transactions are irreversible. Send to your own wallet only. **NOT SURE** if you are being scammed? **CALL US** for assistance at (678) 435-9604.

NO
Bitcoin logo

Enter SMS Code

Please enter the 6-Digit verification code sent to your mobile

Haven't received your verification code yet?

[Call me instead](#)

1	2	3	
4	5	6	
7	8	9	
+	0		Proceed 

Use a Secret PIN instead of SMS text going forward?

If someone else sent you to this machine and provided you with a QR Code or wallet ID to send funds to, it is most likely a scam.

Disclaimer

BITCOIN DEPOT® TERMS AND CONDITIONS

Thank you for visiting the Bitcoin Depot website located at www.bitcoindepot.com (the "Site") and/or one of the Bitcoin Depot virtual currency kiosks ("Kiosks," and together with the Site, the "Bitcoin Depot Venues"). The Bitcoin Depot Venues are properties of Bitcoin Depot Operating, LLC d/b/a Bitcoin Depot (collectively, "Bitcoin Depot" "we," "our" or "us"). The following Bitcoin Depot Terms and Conditions ("Terms and Conditions") are inclusive of the Bitcoin Depot Privacy Notice ("Privacy Notice"), the Bitcoin Depot Refund Policy ("Refund Policy"), the Bitcoin Depot Delivery Policy ("Delivery



Receive email updates

By checking this box, I consent to receive email communications with exclusive offers, promotions, and updates from Bitcoin Depot Operating, LLC at the email address provided. I understand that I can unsubscribe at any time by clicking the 'Unsubscribe' link in future emails.



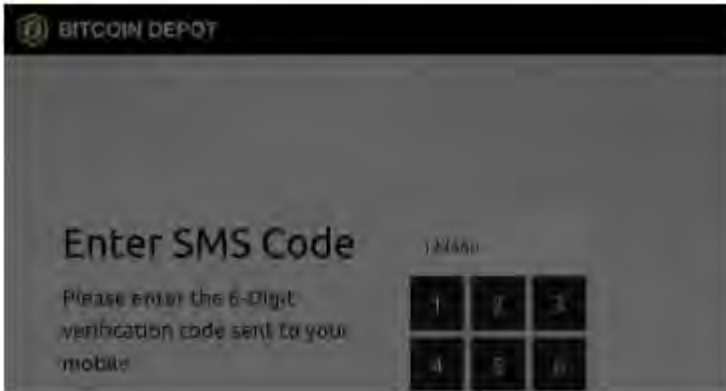
Receive sms updates

By checking this box, I consent to receive SMS messages from Bitcoin Depot Operating, LLC directly and by third parties acting on its behalf for marketing or promotional purposes at the phone number provided. I understand that message and data rates may apply. I can opt-out



I accept these terms and conditions.

Cancel



age verification
modal

Exit

WARNING:

Bitcoin Depot® terms of service require all users to use Bitcoin wallets that they own. You selected that you do not own the wallet you are attempting to use.

Never scan a QR code that has been provided to you from a 3rd party. Remember all Bitcoin transactions are final and irreversible. QR codes provided to you by government entities including the IRS, law enforcement, employers, technical support companies, someone saying you've been hacked and significant other could be scams.

Please contact Bitcoin Depot customer support if you have questions about scams: (678) 435-9604

In order to proceed you will need to create your own Bitcoin wallet and provide the Bitcoin wallet address QR code from that wallet.

Start new transaction with
my own Bitcoin wallet

Need a wallet?

Download our Bitcoin Depot wallet by scanning the QR code



OR

Text me the download link

Scan your digital wallet

Make sure that your entire QR Code is visible on the screen below



Wallet Already in Use

This wallet is already associated with another customer account. Please continue with a different wallet address or call or text Customer Support at (678) 435-9604 if you believe it's yours.

Continue transaction with a new wallet address that belongs to you

If you need a wallet, see the instructions below if you'd like to download our Bitcoin Depot mobile app.

Need a wallet?

Download our Bitcoin Depot wallet by scanning the QR code



OR

Text me the download link

ARE YOU BEING SCAMMED?

ARE YOU BEING SCAMMED? Do not buy bitcoin for IRS payments, utility bills, or if someone says you have been hacked or are being investigated. These are scams!

WARNING: LOSSES DUE TO FRAUDULENT OR ACCIDENTAL TRANSACTIONS MAY NOT BE RECOVERABLE AND TRANSACTIONS IN VIRTUAL CURRENCY ARE IRREVERSIBLE

Exit

Continue