



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • COMMISSIONER **Clothilde V. Hewlett**

INVITATION FOR COMMENTS ON CRYPTO ASSET-RELATED FINANCIAL PRODUCTS AND SERVICES UNDER THE CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW

BACKGROUND

The Department of Financial Protection and Innovation was established in 2020 to monitor and manage emerging risks and opportunities, with the goals of strengthening consumer financial protections and cultivating responsible innovation that provides value for consumers.

On September 25, 2020, Governor Newsom signed AB 1864 (Chapter 157, Statutes of 2020), establishing the California Consumer Financial Protection Law (CCFPL) under Division 24 of the Financial Code. The CCFPL authorizes the Department of Financial Protection and Innovation (DFPI) to regulate the offering and provision of consumer financial products or services. In enacting the CCFPL, the Legislature recognized that “technological innovation offers great promise to the more effective and efficient provision of consumer financial products and services to the population of California and also poses risks to consumers and challenges to law enforcement in addressing those risks.” (Fin. Code, § 90000, subd. (a)(3).) One of the express purposes of the CCFPL is the promotion of “nondiscriminatory consumer-protective innovation in consumer financial products and services.” (Fin. Code, § 90000, subd. (b)(4).)

The CCFPL expanded the ability of the DFPI to improve accountability and transparency in the California financial system, including the power to investigate and research markets for consumer financial products and services, but it also provided the DFPI the ability to develop initiatives to promote innovation. (Fin. Code, § 90006.)

INVITATION FOR COMMENTS

On May 4, 2022, Governor Gavin Newsom issued Executive Order N-9-22 (Executive Order) to foster responsible innovation, bolster California’s innovation economy, and protect consumers. It aims to create a transparent regulatory and business environment for web3 companies which harmonizes federal and California approaches, balances the benefits and risks to consumers, and incorporates California values such as equity, inclusivity, and environmental protection.

In accordance with the Executive Order, the DFPI seeks input from stakeholders and the public in developing guidance and, as appropriate, regulatory clarity and supervision of covered persons and service providers involved in the offering and provision of crypto asset-related financial products and services in California.

Below, the DFPI has formulated topics and questions to assist interested parties in providing input. However, stakeholders are not limited to providing comments in the areas identified by the DFPI and may comment on any potential area for rulemaking relating to crypto asset-related financial products and services, including under other laws administered or enforced by the DFPI, such as the Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.), Escrow Law (Fin. Code, § 17000 et seq.), California Financing Law (Fin. Code, § 22000 et seq.), or Money Transmission Act (Fin. Code, § 2000 et seq.).

For any recommendation relating to rulemaking, the DFPI invites stakeholders and the public to provide a description of the economic impact (if known) of the recommendation for California businesses and consumers.

TOPICS

Regulatory Priorities

1. What steps should the DFPI take to better protect consumers from scams and frauds associated with crypto asset-related financial products and services?
2. What steps should the DFPI take to improve consumer education and outreach for crypto asset-related financial products and services?
3. What steps should the DFPI take to better ensure consumer protection in the offering and provision of crypto asset-related financial products and services?
4. What steps should the DFPI take to better ensure investor protection in the offering and provision of crypto asset-related financial products and services?
5. What steps should the DFPI take to better ensure financial stability in the market from risks posed in the offering and provision of crypto asset-related financial products and services?
6. What steps should the DFPI take to address climate risks posed in the offering and provision of crypto asset-related financial products and services?
7. How should the DFPI strive to harmonize its regulatory approach to crypto asset-related financial products and services with federal authorities?
8. In developing a comprehensive regulatory approach to crypto asset-related financial products and services, how should the DFPI work with other state financial regulators to promote a common approach that increases the reach of DFPI's consumer protection efforts and reduces unnecessary burdens, if any, on companies seeking to operate nationwide?
9. How can the DFPI make California the most desirable home state for responsible companies when developing guidance and, as appropriate, regulatory clarity and supervision of persons involved in the offering and provision of crypto asset-related financial products and services in California?
10. How should the DFPI ensure that California values of inclusive innovation and equity-focused consumer protection are core components of crypto asset-related financial products and services as it develops guidance and, as appropriate, regulatory clarity and

supervision of those persons involved in the offering and provision of crypto asset-related financial products and services in California?

CCFPL Regulation and Supervision

Scope and Definitions

11. Financial Code section 90009, subdivision (a) of the CCFPL authorizes the DFPI to “prescribe rules regarding registration requirements applicable to a covered person engaged in the business of offering or providing a consumer financial product or service.” Are regulations needed to require registration of crypto asset-related financial products and services with the DFPI under Financial Code section 90009, subdivision (a) of the CCFPL?
 - a. What factors should be considered in determining whether the offer or provision of a crypto asset-related financial product or service should trigger registration?
12. Financial Code section 90005, subdivision (k)(12) of the CCFPL states that “financial product or service” includes “offering another financial product or service as may be defined by the department, by regulation,” subject to certain criteria. Are regulations needed to specify crypto asset-related financial products and services that should be included in the definition of a “financial product or service” subject to CCFPL authority?
13. Financial Code section 90009, subdivision (c) of the CCFPL authorizes the DFPI to “prescribe rules applicable to any covered person or service provider identifying as unlawful, unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.” Are regulations needed to identify any unlawful, unfair, deceptive, or abusive acts or practices in connection with the offering of crypto asset-related financial products and services?
14. Financial Code section 90009, subdivision (d) of the CCFPL authorizes the DFPI to “prescribe rules applicable to any covered person to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.” Are regulations needed to ensure that features of crypto asset-related financial products and services are fully, accurately, and effectively disclosed?
15. Financial Code section 90009, subdivision (f)(2) of the CCFPL authorizes the DFPI to “require any covered persons and service providers participating in consumer financial services markets to file . . . annual or special reports, or answers in writing to specific questions, as necessary for the department to fulfill its monitoring, assessment, and

reporting responsibilities.” Are regulations needed to require the filing of reports in connection with the offering crypto asset-related financial products and services?

- A. Should the DFPI adopt rules requiring covered persons to file reports related the offering and provision of crypto asset-related financial products and services? If so, what should such reports contain, and which report responses should be made publicly available?
- B. Should the DFPI adopt rules requiring service providers to file reports related the offering and provision of crypto asset-related financial products and services? If so, what should such reports contain, and which report responses should be made publicly available?

Market-Monitoring

16. The Executive Order directs the DFPI to conduct a market-monitoring inquiry to solicit voluntary information from companies and licensees about their cryptocurrency-related financial products and services to assist DFPI in carefully undertaking any future efforts, including formal rulemaking under the CCFPL. The DFPI invites input and comments on the market-monitoring inquiry, including in response to the following questions:
 - a. Which companies should the DFPI include in the inquiry?
 - b. What products and services should be included in the inquiry?
 - c. What information, if any, should the DFPI collect and publish in the aggregate?
 - d. Should the DFPI publicly post its inquiry online and allow any company to voluntarily respond?

TIME FOR COMMENTS

The Commissioner invites interested parties to submit comments by **August 5, 2022**.

WHERE TO SUBMIT COMMENTS

You may submit comments by any of the following means:

Electronic

Comments may be submitted electronically to regulations@dfpi.ca.gov. Include “Invitation for Comments – Crypto Asset-Related Financial Products and Services” in the subject line.

Mail

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

CONTACT PERSON

Questions regarding this invitation for comments may be directed to Jennifer Rumberger, Senior Counsel for the Commissioner, at Jennifer.Rumberger@dfpi.ca.gov.