

June 17, 2022

California Department of Financial Protection and Innovation Seeks Comments on Oversight of Digital Asset Financial Products and Services

On May 31, 2022, the California Department of Financial Protection and Innovation (the “DFPI”) published an [Invitation for Comments on Crypto Asset-Related Financial Products and Services Under the California Consumer Financial Protection Law](#) (the “Invitation”). The request for comments follows California Governor Gavin Newsom’s May 4, 2022 [Executive Order N-9-22](#) (the “Executive Order”), which aims to develop a comprehensive, coordinated state regulatory framework for digital asset technologies that will strengthen California’s innovation economy and propel its leadership in the blockchain and cryptocurrency industry.

In a [press release](#) accompanying the Executive Order, Governor Newsom stated that “[t]oo often government lags behind technological advancements, so we’re getting ahead of the curve on this, laying the foundation to allow for consumers and business to thrive.” The Executive Order builds on President Biden’s March 9, 2022 [proposal](#) to examine the risks and benefits of, and provide regulatory clarity on, these emerging products and services. California’s initiative sets the state on a path to develop a framework that is aligned with any approach taken by forthcoming federal rules and guidelines.

The Executive Order tasks various state agencies, including the DFPI, with undertaking public engagement to develop the state’s regulatory framework. The DFPI is specifically charged with coordinating with federal agencies and state financial regulators and with soliciting comments from the public and industry stakeholders. The DFPI will also be responsible for developing and publishing consumer protection principles, promulgating consumer education materials, and undertaking monitoring and enforcement.

The DFPI, previously known as the Department of Business Oversight, was established in 2020 to monitor and manage emerging risks and opportunities in the burgeoning intersection of finance and technology. California’s Consumer Financial Protection Law (the “CCFPL”), enacted in September 2020, authorizes the DFPI to regulate the offering and provision of consumer financial products and services. The CCFPL expanded the DFPI’s ability to regulate California’s financial system, including investigating and researching markets for consumer financial products and services, and developing initiatives to promote innovation.

Pursuant to the Executive Order’s mandate, the DFPI issued the Invitation to seek input from stakeholders and the public. According to the Invitation, stakeholders “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.” The Invitation specifically requests that comments describe, for any proposed recommendation, the anticipated economic impact for business and consumers in California.

Although the DFPI invites broad feedback, the Invitation also identifies five specific categories of regulatory priorities, as follows:

1. *Consumer and Investor Protection.* In keeping with the DFPI’s primary mission, the Invitation seeks recommendations for efforts to ensure the protection of both consumers and investors against risks associated with the offering and provision of crypto asset-related financial products and services. The Invitation separately and specifically requests comment on protecting against scams and frauds associated with these products, signaling that this is an acute area of concern for the DFPI. Furthermore, pursuant to the Executive Order’s consumer education mandate, the Invitation solicits comment on how to improve consumer outreach and education related to these products and services.

2. *Financial Stability.* The Invitation seeks comments on measures to promote and ensure financial stability in the market from risks associated with crypto-related financial products and services.
3. *Harmonization of State and Federal Regulatory Approaches.* The Invitation requests input on aligning California’s regulatory approach with that of federal authorities. With respect to state-level coordination, it seeks input on how the DFPI should work with other state financial regulators to promote a common approach. The Invitation highlights some key objectives driving this state-level effort, including expanding the reach of DFPI’s consumer protection undertakings and reducing unnecessary burdens that might arise from the state’s regulatory framework, particularly with respect to blockchain-related companies that operate nationwide.
4. *Preserving California as an Attractive Place of Business.* The Invitation articulates an objective to make California “the most desirable home state” for companies to innovate “responsibl[y].” To that end, the Invitation seeks comments on developing supervision of the industry within the state and formulating associated guidance and regulatory clarity.
5. *ESG.* The Invitation acknowledges that crypto-related financial products raise numerous potential ESG-related issues. For example, it seeks recommendations on how to address climate risks associated with these products and services and on how to ensure that the DFPI’s efforts to promote innovation and to ensure consumer protection are inclusive and equity-focused.

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Comments must be submitted to the DFPI, by mail or email, by **August 5, 2022**.

If you would like to learn more about the issues in this Alert and how they may impact your interests, please contact your usual Ropes & Gray attorney.