

May 26, 2023

The Honorable Pam Hunter
Chair, New York Assembly Banks Committee
Legislative Office Building, Room 424

The Honorable James Sanders
Chair, New York Senate Banks Committee
Legislative Office Building, Room 711

The Honorable Nily Rozic
Chair, New York Assembly Consumer Affairs and Protection Committee
Legislative Office Building, Room 941

Dear Chairs Hunter, Sanders, and Rozic,

Thank you for your leadership on consumer protection and financial innovation in New York. The following coalitions in the digital asset industry write to express concerns and respectfully oppose the Office of Attorney General's (OAG) recently announced Crypto Regulation, Protection, Transparency, and Oversight (CRPTO) Act.

The signatories of this letter are industry businesses, associations, and organizations with a broad membership consortium, reflecting dozens of New York based companies that collectively employ thousands in our state. While we appreciate the OAG's recognition of the need for the continued responsible growth of digital assets, this legislation unfortunately fails to take into account the current and future functionality of digital assets, lacks meaningful input from impacted stakeholders, and could harm consumers by forcing established companies already regulated by the New York State Department of Financial Services (DFS) to cease operations in New York and relocate out of state.

DFS enacted the nation's first comprehensive regulatory regime for digital assets (e.g., the Bitlicense and limited purpose trust charter frameworks) in 2015. While stakeholders differ about aspects of the program, having an established regulatory framework has attracted talent, capital, and employment opportunities to New York. The DFS regulatory regime requires numerous consumer and investor safeguards, including implementation of rigorous anti-money laundering (AML) and anti-fraud programs, comprehensive cybersecurity controls, clear and conspicuous disclosures to customers, segregated customer assets, and monitoring of transactions and digital asset markets for suspicious activity. DFS also supervises its licensees and has exercised enforcement authority to police the market.

While no market participant would suggest the current framework is perfect, it has been a thoughtful blueprint for protecting New Yorkers. The system's efficacy has been evident over the last several months, as most were protected from the fraudulent acts of bad actors, which were notably not licensed or chartered by DFS.

With an already established regulatory regime in place, it is unclear how the CRPTO Act would interact, if at all, with DFS's existing authority and supervision over the digital asset space. We fear that if the CRPTO Act is implemented, it will create a duplicative and confusing regulatory framework.¹ For example, the CRPTO Act requires that digital asset firms have AML and cybersecurity programs, perform market surveillance, and be prohibited from borrowing, lending, or rehypothecating digital assets. DFS already requires these standards, and more, and has nearly a decade of experience in supervising digital asset firms. Rather than weaken existing regulatory clarity, we would encourage efforts to further streamline and improve the DFS framework.

The CRPTO Act also fails to account for the existing operations of licensed entities and includes a number of requirements that would lead many to abandon their operations in New York. This includes a ban on an entity and its affiliates from engaging in different lines of digital asset business—a restriction that is more stringent than required in traditional markets. Many existing New York BitLicensees intentionally established corporate structures and operations in compliance with the state's current regulatory regime, which does not include this prohibition and permits the offering of different types of digital asset services in a responsible and regulated fashion—all subject to regular supervision and examination by DFS. This provision alone would make it impossible for many licensed digital asset companies to operate in New York.²

The CRPTO Act's prohibitive and duplicative requirements, broad and imprecise definitions, and overly punitive fines stand to jeopardize the industry's growth in the state. This is particularly true for digital asset start-ups and small businesses, which are thriving in Queens, Brooklyn, and across many upstate communities. Committee members may have met these start-ups at the Albany Demo Day in April.

¹ The proposed bill exempts banks from many of the most stringent requirements, including the bans on the same firm and affiliates from having multiple lines of business relating to digital assets, a prohibition on proprietary trading, and the requirement that companies must certify to the OAG that they are in compliance with the law. It is unclear why banks should be exempt from regulations that would apply to other financial technology firms.

² The CRPTO Act would also require already regulated New York companies from ceasing to do business with certain types of digital wallets, which is currently allowed under the DFS framework, as well as with any business entity not in compliance with every single provision of this bill. This requirement is again contrary to the existing regulatory framework and would be difficult, if not impossible, for many licensed entities to comply.

Despite the CRPTO Act's significant implications for industry, innovators, and consumers, the bill was announced with less than a month remaining in the legislative session, has yet to be officially introduced, and contains no meaningful input from impacted stakeholders in the industry. A trusted partnership between government and industry stakeholders is critical to crafting inclusive policy that prioritizes consumer protection and innovation, and we fully support efforts to ensure the digital asset industry is held to robust standards.

While we appreciate the OAG's recognition that digital assets have an important role to play in New York, it is clear the CRPTO Act fails to consider key regulatory, legal, and commercial issues that could lead to a mass exodus of companies and jobs from New York. We welcome further opportunities to be a resource and partner with the OAG, DFS, and members of the legislature to protect consumers, safeguard market integrity, and ensure that New York remains the financial and innovation capital.

Respectfully,



Crypto Council for Innovation



Tech:NYC



Chamber of Progress

Cc:

Governor Kathy Hochul

New York State Senate Majority Leader Andrea Stewart-Cousins

New York State Assembly Speaker Carl E. Heastie

Senate Finance Committee Chair Liz Krueger