

Legislative Bill Drafting Commission
10985-06-3

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

GENEBULA* *Attorney General 3 R-5
(Relates to the regulation of
digital assets and the transfer of
such assets)

Gen Bus L. digital assets

AN ACT

to amend the general business law,
in relation to the regulation of
digital assets and the transfer of
such assets; to amend the financial
services law, in relation to the
authority of the department of
financial services to supervise the
business of digital asset brokers,
digital asset marketplaces, digital
asset investment advisers, and
digital asset issuers; and to amend
the tax law, in relation to report-

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s15 Addabbo	s34 Fernandez	s28 Krueger	s01 Palumbo	s42 Skoufis
s43 Ashby	s60 Gallivan	s24 Lanza	s21 Parker	s11 Stavisky
s36 Bailey	s12 Gianaris	s16 Liu	s19 Persaud	s45 Stec
s57 Borrello	s59 Gonzalez	s50 Mannion	s13 Ramos	s35 Stewart-
s46 Breslin	s26 Gounardes	s04 Martinez	s05 Rhoads	Cousins
s25 Brisport	s53 Griffo	s07 Martins	s33 Rivera	s44 Tedisco
s55 Brouk	s40 Harckham	s02 Mattera	s39 Rolison	s06 Thomas
s09 Canzoneri-	s54 Helming	s48 May	s61 Ryan	s49 Walczyk
Fitzpatrick	s41 Hinchey	s37 Mayer	s18 Salazar	s52 Webb
s17 Chu	s47 Hoylman-	s03 Murray	s10 Sanders	s38 Weber
s30 Cleare	Sigal	s20 Myrie	s23 Scarcella-	s08 Weik
s14 Comrie	s31 Jackson	s51 Oberacker	Spanton	
s56 Cooney	s27 Kavanagh	s58 O'Mara	s32 Sepulveda	
s22 Felder	s63 Kennedy	s62 Ortt	s29 Serrano	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a078 Alvarez	a140 Conrad	a150 Goodell	a017 Mikulin	a016 Sillitti
a031 Anderson	a032 Cook	a116 Gray	a122 Miller	a052 Simon
a121 Angelino	a039 Cruz	a100 Gunther	a051 Mitaynes	a075 Simone
a037 Ardila	a043 Cunningham	a139 Hawley	a145 Morinello	a114 Simpson
a035 Aubry	a021 Curran	a083 Heastie	a144 Norris	a094 Slater
a120 Barclay	a018 Darling	a028 Hevesi	a045 Novakhov	a005 Smith
a106 Barrett	a053 Davila	a128 Hunter	a069 O'Donnell	a118 Smullen
a105 Beephan	a072 De Los Santos	a029 Hyndman	a091 Otis	a022 Solages
a107 Bendett	a003 DeStefano	a079 Jackson	a132 Palmesano	a110 Steck
a082 Benedetto	a070 Dickens	a104 Jacobson	a088 Paulin	a010 Stern
a042 Bichotte	a054 Dilan	a011 Jean-Pierre	a141 Peoples-	a127 Stirpe
Hermelyn	a081 Dinowitz	a134 Jensen	Stokes	a102 Tague
a117 Blankenbush	a147 DiPietro	a115 Jones	a023 Pheffer	a064 Tannousis
a015 Blumencranz	a009 Durso	a077 Joyner	Amato	a086 Tapia
a073 Bores	a099 Eachus	a125 Kelles	a063 Pirozzolo	a071 Taylor
a098 Brabenc	a048 Eichenstein	a040 Kim	a089 Pretlow	a001 Thiele
a026 Braunstein	a074 Epstein	a013 Lavine	a019 Ra	a033 Vanel
a138 Bronson	a109 Fahy	a065 Lee	a030 Raga	a055 Walker
a046 Brook-Krasny	a061 Fall	a126 Lemondes	a038 Rajkumar	a143 Wallace
a020 Brown, E.	a008 Fitzpatrick	a095 Levenberg	a006 Ramos	a112 Walsh
a012 Brown, K.	a004 Flood	a060 Lucas	a062 Reilly	a041 Weinstein
a093 Burdick	a057 Forrest	a135 Lunsford	a087 Reyes	a024 Weprin
a085 Burgos	a124 Friend	a123 Lupardo	a149 Rivera	a059 Williams
a142 Burke	a050 Gallagher	a129 Magnarelli	a027 Rosenthal, D.	a113 Woerner
a119 Buttenschon	a131 Gallahan	a101 Maher	a067 Rosenthal, L.	a080 Zaccaro
a133 Byrnes	a007 Gandolfo	a036 Mamdani	a025 Rozic	a096 Zebrowski
a044 Carroll	a068 Gibbs	a130 Manktelow	a111 Santabarbara	a056 Zinerman
a058 Chandler-	a002 Giglio, J.A.	a108 McDonald	a090 Sayegh	
Waterman	a148 Giglio, J.M.	a014 McDonough	a076 Seawright	
a049 Chang	a066 Glick	a097 McGowan	a084 Septimo	
a136 Clark	a034 Gonzalez-	a146 McMahan	a092 Shimsky	
a047 Colton	Rojas	a137 Meeks	a103 Shrestha	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and: in Assembly 2 copies of memorandum in support, in
Senate 4 copies of memorandum in support (single house); or 4 signed copies
of bill and 6 copies of memorandum in support (uni-bill).

ing requirements concerning certain
payments by digital assets

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new article
2 23-C to read as follows:

3 ARTICLE 23-C

4 DIGITAL ASSETS

5 Section 359-m. Purpose of article.

6 359-n. Definitions.

7 359-o. Substantive regulatory provisions.

8 359-p. Anti-fraud and manipulation.

9 359-q. Registration.

10 359-r. Civil penalty.

11 § 359-m. Purpose of article. The purpose of this article is to protect
12 customers and investors in digital assets from fraudulent practices,
13 eliminate conflicts of interest and increase transparency. This article
14 operates on persons engaged in the activities described herein from or
15 within New York state.

16 § 359-n. Definitions. 1. All terms used in this article, unless
17 otherwise stated herein, shall have the same meaning as such terms are
18 defined in article twenty-three-A of this chapter.

19 2. "Cross transaction" shall mean a transaction in which a digital
20 asset broker effects transactions for both the buyer and for the seller
21 on the other side of the transaction.

22 3. "Decentralized autonomous organization" or "DAO" means an organiza-
23 tion operated through rules encoded as computer programs, including
24 smart contracts, and governed by pre-programmed algorithms executed by
25 computers based on code, where such code refers to voting by holders of
26 digital assets issued by or concerning the DAO.

27 4. "Digital asset" shall mean any type of digital unit, whether
28 labeled as a cryptocurrency, coin, token, virtual currency, or other-

1 wise, that can be used as a medium of exchange, a form of digitally
2 stored value, or a unit of account. "Digital asset" shall be broadly
3 construed to include digital units that have a centralized repository or
4 administrator, are decentralized and have no centralized repository or
5 administrator, or may be created or obtained by computing or manufactur-
6 ing effort. The term "digital asset" shall not be construed to include
7 any of the following:

8 (a) digital units that:

9 (i) are used solely within online gaming platforms;

10 (ii) have no market or application outside of those gaming platforms;

11 (iii) cannot be converted into, or redeemed for, fiat currency or
12 digital assets; and

13 (iv) to the extent they may be redeemable for real-world goods,
14 services, discounts, or purchases, are only used for consumption by the
15 gamer;

16 (b) digital units that can be redeemed for goods, services, discounts,
17 or purchases as part of a customer affinity or rewards program with the
18 issuer or other designated merchants or can be redeemed for digital
19 units in another customer affinity or rewards program, but cannot be
20 converted into, or redeemed for, fiat currency or digital assets;

21 (c) digital units used solely as part of prepaid cards;

22 (d) digital units used solely in sports wagering and mobile sports
23 wagering subject to sections thirteen hundred sixty-seven and thirteen
24 hundred sixty-seven-a of the racing, pari-mutuel wagering and breeding
25 law and regulations thereunder; or

26 (e) digital units that provide an equity interest in a business.

27 5. "Digital asset broker" shall mean any person engaged in the busi-
28 ness of effecting transactions in digital assets for the account of

1 others, whether the digital asset broker receives a benefit directly or
2 indirectly.

3 6. "Digital asset influencer" shall mean any person who, in connection
4 with the offer or sale of any digital asset, widely promotes, publishes,
5 publicizes or circulates any notice, circular, advertisement, newspaper,
6 article, letter, investment service, electronic posting or communication
7 which, though not purporting to offer a digital asset for sale, encour-
8 ages investment in such digital asset, where such person receives
9 compensation of any sort or owns or expects to own such digital asset,
10 unless such ownership or expected ownership amounts to less than twen-
11 ty-five thousand dollars in value. "Digital asset influencer" shall not
12 include a publisher of any bona fide newspaper or news magazine of
13 general distribution.

14 7. "Digital asset investment adviser" shall mean any person who, for
15 compensation, engages in the business of advising members of the public,
16 either directly or through publications or writings, as to the value of
17 digital assets or as to the advisability of investing in digital assets,
18 including by recommending or curating a portfolio of digital assets
19 accessible by another or by taking discretion over the use of another's
20 digital asset for any investment purpose. Digital asset investment
21 advisers shall owe a fiduciary duty to any person for whom they provide
22 digital asset investment adviser services. "Digital asset investment
23 adviser" shall not mean:

24 (a) a lawyer, accountant, engineer, or teacher whose performance of
25 digital asset investment adviser services is solely incidental to the
26 practice of this profession;

27 (b) a digital asset broker whose performance of digital asset invest-
28 ment adviser services is solely incidental to the conduct of his or her

1 business as a digital asset broker and who receives no special compen-
2 sation for them;

3 (c) a publisher of any bona fide newspaper or news magazine of general
4 distribution;

5 (d) a person who sold, during the preceding twelve-month period,
6 digital asset investment advisory services to fewer than six persons
7 residing in this state; or

8 (e) a person who is registered under section 203 of the Investment
9 Advisers Act of 1940, 15 U.S.C. § 80b et seq., but only to the extent
10 that such person acts in such capacity.

11 8. "Digital asset issuer" shall mean a person that creates or issues
12 or offers to issue a digital asset that is or will be available to the
13 public and is directly or indirectly for speculation or investment
14 purposes or for use as a currency, medium of exchange, a form of
15 digitally stored value, a unit of account or any combination thereof and
16 not for consumption by the offeree or purchaser. Digital asset issuer
17 does not include a person whose activity consists solely of issuing,
18 offering, buying, or selling digital assets for a bona fide artistic
19 purpose, such as the issuance of individual art or music.

20 9. "Digital asset marketplace" shall mean any person that provides, or
21 substantively participates in, or any system that provides, a market-
22 place or facilities for bringing together purchasers and sellers of
23 digital assets or for otherwise performing, with respect to digital
24 assets, the functions commonly performed by a stock exchange as that
25 term is generally understood with regard to stocks.

26 10. "Off-chain transaction" shall mean a transaction that is confirmed
27 or stored outside of a public blockchain network.

1 11. "Physical possession or control" as used in this article shall
2 have the same meaning as in 17 C.F.R. § 240.15c3-3(b)(1) and (c) and
3 includes but is not limited to holding private keys necessary to trans-
4 fer a customer's digital assets or maintaining custody with a third-par-
5 ty custodian in accordance with 17 C.F.R. § 240.15c3-3(c).

6 12. "Promoting" shall mean widely publishing, publicizing or circulat-
7 ing any notice, circular, advertisement, newspaper, article, letter,
8 investment service, electronic posting or communication which, though
9 not purporting to offer a digital asset for sale, encourages investment
10 in such digital asset.

11 13. "Proprietary trading agent" shall mean any person who engages in
12 the business of offering, buying, or selling digital assets for the
13 benefit of the account of a digital asset issuer, digital asset broker,
14 digital asset marketplace, or digital investment adviser.

15 14. "Unauthorized digital asset transfer" shall mean:

16 (a) any transaction involving a digital asset that is effected without
17 the customer's actual authorization, including when the password or
18 private key has been used to effect the transfer, so long as the custom-
19 er receives no benefit; or

20 (b) any transaction involving a digital asset that is effected with
21 the customer's authorization due to fraudulent inducement by a third
22 party, including fraudulent inducement by any digital asset broker,
23 digital asset issuer, digital asset investment adviser, or digital asset
24 marketplace.

25 When a customer reports that a digital asset transfer is unauthorized,
26 such transfer shall be presumed to be an unauthorized digital asset
27 transfer.

1 15. A designation under any definition in this section shall not be
2 exclusive to any other definition provided under this chapter, the bank-
3 ing law, or the financial services law.

4 § 359-o. Substantive regulatory provisions. 1. It shall be illegal and
5 prohibited for any person or affiliate to act as more than one of the
6 following: a digital asset issuer, a digital asset broker, a digital
7 asset marketplace, or a digital asset investment adviser.

8 2. It shall be illegal and prohibited for any digital asset issuer,
9 digital asset broker, digital asset marketplace, digital asset invest-
10 ment adviser, or any affiliate thereof to act as, employ, or otherwise
11 use the services of any proprietary trading agent.

12 3. It shall be illegal and prohibited for any digital asset issuer,
13 digital asset broker, digital asset marketplace, or digital asset
14 investment adviser to operate unless and until it has publicly posted a
15 certification of compliance with all requirements of this article.

16 4. Subdivisions one, two and three of this section shall not apply to
17 any bank as defined in paragraph (e) of subdivision one of section three
18 hundred fifty-nine-e of this chapter, except that any bank engaged
19 primarily as a digital asset broker, digital asset issuer or digital
20 asset investment adviser shall not be exempt. A bank shall not act as a
21 digital asset marketplace and any of the following: digital asset
22 broker, digital asset issuer and digital asset investment adviser. A
23 bank acting as a digital asset broker shall not effect transactions in
24 any digital asset it has issued.

25 5. Every digital asset issuer, digital asset broker, digital asset
26 marketplace, or digital asset investment adviser shall publicly post and
27 make publicly accessible independently audited annual financial state-
28 ments no later than one hundred five calendar days after the end of the

1 fiscal year and quarterly financial statements no later than seventeen
2 business days after the quarter's end.

3 6. Every digital asset broker and digital asset investment adviser
4 shall maintain an anti-money laundering program in accordance with
5 applicable state and federal laws and regulations. In addition, every
6 digital asset broker and digital asset investment adviser shall use
7 reasonable diligence, in regard to the opening and maintenance of every
8 account, to know and retain the essential facts concerning every custom-
9 er and concerning the authority of each person acting on behalf of such
10 customer. For purposes of this subdivision, facts deemed "essential" to
11 knowing the customer are those required to: (a) effectively service the
12 customer's account; (b) act in accordance with any special handling
13 instructions for the account; (c) understand the authority of each
14 person acting on behalf of the customer; and (d) comply with applicable
15 state and federal laws and regulations. For each account, every digital
16 asset broker shall make and keep the books and records required by 17
17 C.F.R. § 240.17a-3(a)(17)(i)(A) and every digital asset investment
18 adviser shall make and maintain documentation and information equivalent
19 to books and records required by an investment adviser under section
20 three hundred fifty-nine-eee of this chapter and 13 N.Y.C.R.R. 11.9.

21 7. Every digital asset broker shall promptly obtain and shall there-
22 after maintain the physical possession or control of all fully paid
23 digital assets carried by the digital asset broker for the accounts of
24 customers and shall restrict access to such accounts to authorized
25 persons. A digital asset broker shall not borrow, lend, rehypothecate,
26 or in any way encumber the digital assets from any customer.

1 8. A digital asset marketplace shall only take physical possession or
2 control of a customer's digital asset for the purpose of effecting a
3 specific transaction.

4 9. Every digital asset issuer shall be prohibited from issuing to an
5 investor any note or other debt instrument that: (a) offers interest or
6 similar expected payment; and (b) is payable on demand or otherwise has
7 the features of a demand deposit as defined in 12 C.F.R. § 204(b) or
8 that would permit the investor to withdraw cash or digital assets within
9 seven days. This prohibition shall not apply to a transaction in which a
10 digital asset issuer issues a note or debt instrument to a lender in a
11 commercial transaction.

12 10. It shall be illegal and prohibited for any digital asset issuer,
13 digital asset broker, digital asset marketplace, or digital asset
14 investment adviser to refer to any digital asset as a "stablecoin" or to
15 represent that any product is similar to a "stablecoin", unless a
16 stablecoin ratio equal to 1.0 or greater is maintained at all times. A
17 stablecoin ratio shall equal U.S. currency, Level 1 liquid assets as
18 defined in 12 C.F.R. § 249.20, or both; divided by the stated value of
19 the stablecoin.

20 11. It shall be illegal and prohibited for any digital asset broker to
21 effect transactions for its own account, unless for a purpose specif-
22 ically allowed by rules or regulations adopted by the attorney general
23 pursuant to this article.

24 12. It shall be illegal and prohibited for any digital asset broker to
25 effect "cross transactions".

26 13. Every digital asset broker shall disclose to its customers any
27 fees to be received from any source whatsoever, including any commis-

1 sion, immediately prior to effecting a transaction in any digital asset
2 on behalf of the customer.

3 14. It shall be illegal and prohibited for any digital asset broker to
4 recommend or to refer any person to any digital asset investment adviser
5 or digital asset issuer where such digital asset broker receives any
6 potential or actual economic benefit, directly or indirectly.

7 15. It shall be unlawful and prohibited for any digital asset broker
8 or digital asset marketplace to engage in business, including through
9 trading, with any other digital asset broker or digital asset market-
10 place that is not in substantial compliance with the provisions in
11 subdivision six of this section or with any unhosted or non-custodial
12 wallet. For the purposes of this subdivision, a digital asset broker or
13 digital asset marketplace licensed by the department of financial
14 services and registered with the department of law shall be presumed to
15 be in substantial compliance. Notwithstanding the above, a digital asset
16 broker may receive an incoming transfer of digital assets into a custom-
17 er's hosted or custodial wallet from an unhosted or non-custodial wallet
18 or non-compliant digital asset broker where the receiving digital asset
19 broker receives no fee and may transfer digital assets to an unhosted or
20 non-custodial wallet owned and controlled by the digital asset broker's
21 customer so long as the digital asset broker has complied with the know-
22 your-customer provisions in subdivision six of this section as to such
23 customer.

24 16. Every digital asset marketplace shall publicly disclose in a sche-
25 dule posted in an easily accessible manner any fees to be received from
26 any source whatsoever, including any listing fee or commission for
27 facilitating any digital asset transaction or listing any digital asset.

1 17. Every digital asset issuer, digital asset broker, digital asset
2 marketplace, and digital asset investment adviser shall create, imple-
3 ment, and maintain an effective cybersecurity program that satisfies the
4 requirements of applicable state and federal data privacy and cyberse-
5 curity laws and regulations.

6 18. Every digital asset marketplace shall adopt and publish listing
7 standards for digital assets that it lists. The listing standards shall
8 include capital requirements for issuers, public disclosure of the
9 source code for each digital asset that it lists, and such other matters
10 as the attorney general may require by rule or regulation. For every
11 digital asset that it lists, the digital asset marketplace shall verify
12 that the digital asset software code is consistent with the issuer's
13 disclosure, and that it contains security properties in compliance with
14 applicable state and federal laws and regulations. A digital asset
15 marketplace shall list only digital assets that conform to the listing
16 standards that such marketplace adopts and publishes to the public and
17 for which a prospectus pursuant to subdivision twenty-two of this
18 section is available, unless subject to subdivision twenty-three of this
19 section.

20 19. Every digital asset broker shall maintain net capital that meets
21 the standards for brokers and dealers under 17 C.F.R. § 240.15c3-1 and
22 any applicable laws, rules, and regulations enforced by the department
23 of financial services.

24 20. Every digital asset investment adviser shall be prohibited from
25 taking or maintaining the physical possession or control of any inves-
26 tor's digital assets. For the purposes of this subdivision, a digital
27 asset investment adviser's ability to direct discretionary trading

1 through a digital asset broker shall not be considered physical
2 possession or control of digital assets.

3 21. A digital asset investment adviser shall not operate if it is
4 insolvent. For the purposes of this subdivision, a digital asset invest-
5 ment adviser is insolvent if it meets the definition of paragraph 32 of
6 section 101 of title 11 of the United States Code, or is unable to meet
7 its obligations as they mature, or has made an admission to such effect
8 in writing or in any court or before any agency of the United States or
9 any state.

10 22. Every digital asset issuer who issues a digital asset shall, with
11 respect to each such digital asset, prior to issuance:

12 (a) publish and distribute a prospectus stating, at a minimum, all
13 related material information about the issuer and the digital asset,
14 including but not limited to:

15 (i) a description of its business;

16 (ii) a description of its financial condition;

17 (iii) a description of its results of operations;

18 (iv) a description of risk factors;

19 (v) a description of conflicts of interest;

20 (vi) the identities of all directors, executive officers (including
21 their positions), and key employees who make or are expected to make
22 significant contributions to the development of the digital asset; and

23 (vii) financial statement schedules.

24 (b) furnish to the department of law, to the extent applicable, infor-
25 mation about recent sales of digital assets equivalent to the informa-
26 tion in 17 C.F.R. § 229.701 (a), (b), (c), and (d). References to "secu-
27 rities" in 17 C.F.R. § 229.701 shall apply to digital assets for
28 purposes of this subdivision and references to the "registrant" in 17

1 C.F.R. § 229.701 shall apply to digital asset issuers for purposes of
2 this subdivision.

3 For any issuance occurring before the effective date of this article,
4 the digital asset issuer shall comply with the requirements of this
5 subdivision within ninety days of such effective date.

6 23. It shall be illegal and prohibited for any digital asset broker or
7 digital asset marketplace to sell or offer to sell, and for any digital
8 asset investment adviser to advise, on any digital asset unless it (a)
9 makes public disclosures regarding the digital asset issuer's business
10 operations, financial condition, results of operations, risk factors,
11 and management, and (b) directs the customer to the digital asset
12 issuer's most recent financial statements. Notwithstanding the above,
13 for any digital asset already listed as of the effective date of this
14 article, any digital asset broker and digital asset marketplace may sell
15 or offer to sell, and any digital asset investment adviser may advise
16 on, any digital asset where they cannot obtain the aforesaid information
17 after a diligent search, and where such digital asset broker, digital
18 asset marketplace, or digital asset investment adviser publicly
19 discloses the details and results of its search and any related material
20 information it obtained.

21 24. Every digital asset broker and digital asset marketplace that
22 effects an off-chain transaction shall, within ten seconds of such tran-
23 saction, publish to the public, and permanently store in a location
24 available to the public the price and volume of the transaction and any
25 other information about the transaction required by the attorney general
26 through rule or regulation. Any such public reporting shall not identify
27 the parties to the transaction. Every digital asset broker and digital
28 asset marketplace shall make such other reports regarding customer tran-

1 sactions as may be required by rule or regulation of the attorney gener-
2 al in consultation with the department of financial services.

3 § 359-p. Anti-fraud and manipulation. 1. It shall be illegal and
4 prohibited for any person, in connection with the offer or sale of any
5 digital asset, to make any promise or representation as to the future
6 which is beyond reasonable expectation or unwarranted by existing
7 circumstances.

8 2. It shall be illegal and prohibited for any person, in connection
9 with the offer or sale of any digital asset, to make any untrue state-
10 ment of a material fact, or to omit to state a material fact necessary
11 in order to make the statement made, in light of the circumstances under
12 which they were made, not misleading.

13 3. With respect to any digital asset, it shall be illegal and prohib-
14 ited for any person to engage in any activity that constitutes a
15 violation of any state or federal securities or commodities law, rule,
16 or regulation.

17 4. It shall be illegal and prohibited for any person, directly or
18 indirectly, to engage in wash trading, prearranged trading, market
19 manipulation or insider trading.

20 5. Every digital asset issuer, digital asset broker, digital asset
21 marketplace, and digital asset investment adviser, in the conduct of its
22 business, shall observe high standards of commercial honor and just and
23 equitable principles of trade.

24 6. Every digital asset broker and digital asset marketplace shall
25 establish, maintain, and enforce written procedures and supervisory
26 systems that are reasonably designed to prevent market manipulation,
27 wash trading, prearranged trading, insider trading, or any other fraudu-
28 lent trading. Each digital asset broker shall retain an independent

1 third-party service provider to, or shall itself, institute a market
2 surveillance system to monitor the order entry, trading, or other mark-
3 et-related activities conducted through the digital asset broker or
4 digital asset marketplace. Such market surveillance system shall surveil
5 market-related activities, including those occurring outside of the
6 digital asset broker or digital asset marketplace, to prevent or detect
7 fraudulent trading, such as market manipulation, wash trading, prear-
8 ranged trading, and insider trading, and otherwise maintain the quality
9 of the market in which the digital asset broker or digital asset market-
10 place effects transactions.

11 7. It shall be illegal and prohibited for any person, in connection
12 with the offer or sale of any digital asset, to engage in any act, prac-
13 tice, or course of business which operates or would operate as a fraud
14 or deceit upon any person.

15 8. This subdivision governs unauthorized digital asset transfers.

16 (a) A digital asset broker or digital asset investment adviser shall
17 provide the following disclosures at the time a customer contracts for
18 an account with the digital asset broker or digital asset investment
19 adviser:

20 (i) a summary of the customer's liability, under this paragraph or
21 under state or other applicable law or agreement, for unauthorized
22 digital asset transfers; and

23 (ii) the telephone number and address of the person or office to be
24 notified when the consumer believes that an unauthorized digital asset
25 transfer has been or may be made.

26 (b) A customer may be held liable, within the limitations described in
27 this paragraph, for an unauthorized digital asset transfer involving the
28 customer's account only if the digital asset broker or digital asset

1 adviser has provided the disclosures required by paragraph (a) of this
2 subdivision. If the unauthorized digital asset transfer involved a
3 private key, the digital asset broker or digital asset investment advis-
4 er must have provided a means to identify the customer to whom it was
5 issued.

6 (c) A customer's liability for an unauthorized digital asset transfer
7 or a series of related unauthorized digital asset transfers shall be
8 determined as follows:

9 (i) If the customer notifies the digital asset broker or digital asset
10 investment adviser within two business days after learning of the unau-
11 thorized digital asset transfer, the consumer's liability shall not
12 exceed the lesser of:

13 (A) fifty dollars; or

14 (B) the amount of unauthorized digital asset transfers that occur
15 before notice to the digital asset broker or digital asset investment
16 adviser.

17 (ii) If the customer fails to notify the digital asset broker or
18 digital asset investment adviser within two business days after learning
19 of the unauthorized digital asset transfer, the customer's liability
20 shall not exceed the lesser of five hundred dollars or the sum of:

21 (A) fifty dollars or the amount of unauthorized digital asset trans-
22 fers that occur within the two business days, whichever is less; and

23 (B) the amount of unauthorized digital asset transfers that occur
24 after the close of the two business days and before notice to the
25 digital asset broker or digital asset investment adviser, provided the
26 digital asset broker or digital asset investment adviser establishes
27 that these transfers would not have occurred had the customer notified

1 the digital asset broker or digital asset investment adviser within that
2 two-day period.

3 (iii) A customer must report an unauthorized digital asset transfer
4 within sixty days of the transfer to avoid liability for subsequent
5 transfers. If the customer fails to do so, the customer's liability
6 shall not exceed the amount of the unauthorized digital asset transfers
7 that occur after the close of the sixty days and before notice to the
8 digital asset broker or digital asset investment adviser, if the digital
9 asset broker or digital asset investment adviser establishes that the
10 unauthorized digital asset transfer would not have occurred had the
11 customer notified the digital asset broker or digital asset investment
12 adviser within the sixty-day period.

13 (d) Notice under this subdivision shall be deemed sufficient when such
14 steps have been taken as may be reasonably required in the ordinary
15 course of business to provide the digital asset broker or digital asset
16 investment adviser with the pertinent information, whether or not any
17 particular officer, employee, or agent of the digital asset broker or
18 digital asset investment adviser does in fact receive such information.

19 (e) To the extent the customer's liability is limited as set forth in
20 paragraph (c) of this subdivision, the digital asset broker or digital
21 asset investment adviser shall be liable to the customer for the balance
22 of the loss.

23 (f) In any action that involves a customer's liability for an unau-
24 thorized digital asset transfer, the burden of proof shall be upon the
25 digital asset broker or digital asset investment adviser to show that
26 the digital asset transfer was authorized or, if the digital asset
27 transfer was unauthorized, then the burden of proof shall be upon the

1 digital asset broker or digital asset investment adviser to establish
2 the conditions of liability set forth in this subdivision.

3 (g) Nothing in this subdivision shall be deemed to impose liability
4 upon a customer for an unauthorized digital asset transfers in excess of
5 the customer's liability for such a transfer under other applicable laws
6 or under any agreement with the customer's digital asset broker or
7 digital asset investment adviser.

8 (h) Except as provided in this subdivision, a customer shall incur no
9 liability from an unauthorized electronic fund transfer.

10 § 359-q. Registration. 1. Every digital asset broker, digital asset
11 marketplace, digital asset investment adviser, and digital asset issuer
12 shall file a registration statement (the "digital asset statement") with
13 the department of law prior to engaging in business within or from New
14 York.

15 2. It shall be illegal and prohibited for any digital asset influencer
16 to engage in promoting without disclosing their ownership interest,
17 compensation, or both in connection with the digital asset they are
18 promoting, and without first filing a registration statement ("digital
19 asset influencer statement") with the department of law. Notwithstanding
20 the above, a digital asset issuer who has filed a digital asset state-
21 ment may engage in promoting with regard to its own digital asset with-
22 out filing a digital asset influencer statement provided that such
23 issuer: (a) discloses its connection with the digital asset; and (b)
24 has followed all other applicable state and federal laws.

25 3. Every digital asset influencer statement shall consist of disclo-
26 sure of:

27 (a) the digital asset influencer's legal name;

28 (b) the digital asset influencer's associated websites;

- 1 (c) the digital asset influencer's social media handles;
2 (d) the digital asset influencer's wallet addresses;
3 (e) the digital asset influencer's educational background;
4 (f) the digital asset influencer's business background;
5 (g) the digital asset influencer's criminal background;
6 (h) disclosure of conflicts of interest involving current holdings and
7 past holdings;
8 (i) prices paid for any digital assets of the issuer or any third
9 party; and
10 (j) any other information required by rule or regulation set by the
11 attorney general.

12 4. Every digital asset influencer that owns or expects to own a
13 digital asset that the digital asset influencer promotes shall comply
14 with the provisions in 17 C.F.R. § 230.144 with respect to such digital
15 asset so as to refrain from engaging in a distribution of the digital
16 asset and acting as an underwriter.

17 5. The registration period for digital asset statements and digital
18 asset influencer statements shall be effective for one year from the
19 date of filing. Renewal filings must be made within 60 days prior to
20 expiration. Digital asset statements and digital asset influencer
21 statements must be amended pursuant to rules and regulations set by the
22 attorney general.

23 6. Every filer of a digital asset influencer statement shall pay to
24 the department of law fees of:

25 (a) three hundred dollars for each initial and renewal digital asset
26 statement and promoter statement; and

27 (b) thirty dollars for each amendment.

1 7. Every filer of a digital asset statement shall pay to the depart-
2 ment of law fees of:

3 (a) three hundred dollars for each initial and renewal digital asset
4 statement; and

5 (b) thirty dollars for each amendment.

6 8. The registration filings of persons required to file under this
7 article shall be for a period of one year, commencing on January first
8 next succeeding the effective date of this article. Renewal statements
9 shall be filed within sixty days prior to each following January first.
10 Initial filings may be made after January first of any year by any
11 person whose activities require registration under this section, but
12 such filing must be made within ten days prior to engaging in such
13 activities.

14 9. The digital asset statement registration provisions of this section
15 shall not apply to:

16 (a) any person registered under GBL 359-e or GBL 359-eee or the rules
17 and regulations thereunder, where such registration relates directly to
18 the digital asset activity engaged in, except Federal Regulation D
19 Covered Securities Dealers and Federal Tier 2 Dealers engaged in non-se-
20 curities activity; or

21 (b) any bank that satisfies the conditions of 15 U.S.C. §
22 78c(a)(4)(B)(i) through (vi), (viii) through (x), and, if limited to
23 unsolicited transactions, (xi); 15 U.S.C. § 78c(a)(4)(E); and 15 U.S.C.
24 § 3(a)(5)(B) and (C).

25 10. Every digital asset issuer, digital asset broker, digital asset
26 marketplace, digital asset investment adviser, digital asset agent,
27 proprietary trading influencer, and DAO shall be subject to service

1 under section three hundred fifty-two-b of this chapter as if each, or
2 any, were a broker, dealer, or salesman under such section.

3 11. Every person who, directly or indirectly, controls any person
4 liable under any provision of this section or of any rule or regulation
5 thereunder shall also be liable jointly and severally with and to the
6 same extent as such controlled person.

7 12. A violation of this article shall be a fraudulent practice within
8 the meaning of article twenty-three-A of this chapter.

9 13. The attorney general shall have jurisdiction to enforce any
10 violation of this article through any means available to the attorney
11 general.

12 14. The investigatory powers provided to the attorney general in
13 section three hundred fifty-two of this chapter shall apply equally with
14 respect to this article.

15 15. The attorney general may from time to time in the public interest
16 make, amend, and rescind such rules, regulations, and forms as are
17 necessary to carry out the provisions of this article, including rules,
18 regulations, and forms governing persons and digital assets defined in
19 this article and any exemptions from such definitions. For the purposes
20 of such rules, regulations, and forms, the attorney general may categor-
21 ize digital assets, persons, and matters within the attorney general's
22 jurisdiction and may prescribe different requirements for different
23 categories.

24 16. Nothing herein shall be interpreted to limit in any way the
25 department of financial service's role or authority as supervisor of its
26 chartered or licensed persons (or those that fail to seek required char-
27 ters or licenses) and its authority under the banking law and the finan-

1 cial services law, including implementing regulations or otherwise, or
2 to supervise such entities or persons and enforce relevant laws.

3 17. If any clause, sentence, paragraph, subdivision, section, or part
4 of this article, or any application thereof to any person or circum-
5 stance shall be adjudged by a court of competent jurisdiction to be
6 invalid, such judgment shall not affect, impair, or invalidate the
7 remainder of this article or any application thereof to any other person
8 or circumstance, but shall be confined in its operation to the clause,
9 sentence, paragraph, subdivision, section, part, or application directly
10 involved in the controversy in which such judgment shall have been
11 rendered. It is hereby declared to be the intent of the legislature that
12 this article shall apply to the greatest permissible extent, and that
13 this article would have been enacted even if it had omitted any
14 provisions or potential applications that may hereafter be adjudged
15 invalid.

16 § 359-r. Civil penalty. 1. Upon a showing by the attorney general that
17 a violation of this article or article twenty-three-A of this chapter
18 has occurred, the attorney general may seek, and a court shall have
19 jurisdiction to impose, a civil penalty that shall not exceed the great-
20 er of:

21 (a) ten thousand dollars for each violation by a natural person or one
22 hundred thousand dollars for each violation by any other person; or

23 (b) the gross amount of any pecuniary gain to such defendant or the
24 loss sustained by any other person or entity as a result of the
25 violation.

26 2. The attorney general shall undertake a review of the penalties in
27 paragraph (a) of subdivision one of this section at least once every two
28 years and shall be empowered to adjust such penalties by rule or order

1 for any increase in the consumer price index for all urban consumers
2 published by the United States department of labor, or any successor
3 index.

4 § 2. Section 301 of the financial services law is amended by adding
5 four new subsections (d), (e), (f) and (g) to read as follows:

6 (d) The authority granted to the superintendent of the department
7 under this section shall be applicable to digital asset brokers and
8 digital asset marketplaces, as defined under article two of the banking
9 law, as if anything meeting the definition of "digital asset" consti-
10 tutes "financial products and services" under this chapter, and shall
11 not be excepted from such authority by FIS 104(a)(2)(A)(ii) or FIS
12 104(2-a). Nothing herein shall affect the application of, or exclusion
13 from, this chapter on activity unrelated to digital assets.

14 (e) A violation of article twenty-three-C of the general business law
15 shall constitute a violation of this chapter and a violation of the
16 banking law.

17 (f) The superintendent shall supervise the business of digital asset
18 brokers, digital asset marketplaces, digital asset investment advisers,
19 and digital asset issuers subject to article two of the banking law in
20 accordance with section two hundred one of this chapter. In accordance
21 with 23 N.Y.C.R.R. § 200.13, the superintendent shall have the power to
22 examine every digital asset broker, digital asset marketplace, digital
23 asset investment adviser, and digital asset issuer that files a digital
24 asset statement with the department of law. Every digital asset broker,
25 digital asset marketplace, digital asset investment adviser, and digital
26 asset issuer that files a digital asset statement with the department of
27 law shall permit and assist the superintendent of the department to
28 examine the digital asset broker, digital asset marketplace, digital

1 asset investment adviser, or digital asset issuer in accordance with the
2 provisions of 23 N.Y.C.R.R. § 200.13 as if such digital asset broker,
3 digital asset marketplace, digital asset investment adviser, or digital
4 asset issuer were a licensee under such regulations.

5 (g) The attorney general and the superintendent shall cooperate, coor-
6 dinate and assist one another, in the carrying out of their respective
7 responsibilities for the protection of consumers and investors in
8 digital assets.

9 § 3. Section 1133 of the tax law is amended by adding a new subdivi-
10 sion (g) to read as follows:

11 (g) Any business operating within New York state shall report to the
12 department, the receipt of any digital asset as payment for any goods or
13 services of over five thousand dollars, from any person within New York
14 including details as to the person who paid using digital assets.

15 § 4. Severability. If any clause, sentence, paragraph, subdivision,
16 section or part of this act shall be adjudged by any court of competent
17 jurisdiction to be invalid, such judgment shall not affect, impair, or
18 invalidate the remainder thereof, but shall be confined in its operation
19 to the clause, sentence, paragraph, subdivision, section or part thereof
20 directly involved in the controversy in which such judgment shall have
21 been rendered. It is hereby declared to be the intent of the legislature
22 that this act would have been enacted even if such invalid provisions
23 had not been included herein.

24 § 5. This act shall take effect on the thirtieth day after it shall
25 have become a law.