

**Testimony of Ji Hun Kim, Head of Global Policy, Digital Assets & General Counsel,
Crypto Council for Innovation**

**Assembly Standing Committee on Consumer Affairs and Protection and Assembly Standing
Committee on Banks - [“Examining the Transparency and Security of the Cryptocurrency
Industry”](#)**

Thank you Chair Hunter, Chair Rozic, and distinguished members of both the Assembly Banks Committee and the Assembly Consumer Affairs and Protection Committee for the opportunity to testify before you today on how to best allow the digital asset industry to innovate while protecting consumers and investors in New York. I am grateful for the engagement and leadership of so many on both committees.

I am pleased today to represent the Crypto Council for Innovation (CCI), a global alliance of industry leaders in the digital assets space. We use an evidence-based approach to support governments worldwide that are shaping and encouraging the responsible regulation of this innovative technology. We believe that constructive partnership between government and business stakeholders is critical to crafting inclusive regulation that benefits consumers, investors, and industry. We are proud to have many New York-based members who employ thousands across New York state, from Manhattan to Buffalo. They also include some of the first firms to apply for and receive either the New York Department of Financial Services (DFS) BitLicense or limited purpose trust charter (LPTC).

The topic of today’s hearing is an important one to me, not just in my capacity representing CCI but also because I am a proud New Yorker. I graduated from Fordham University School of Law and have lived and worked in New York for nearly 15 years. My wife, young children, and I are all very proud to call New York home. My passion for New York extends to my vocational goal: to get regulation right to best safeguard New Yorkers and responsibly facilitate a promising digital asset industry, which already has deep New York roots and the potential to continue creating thousands of jobs. I am indeed proud that my home state has long led when it comes to thoughtful regulation to supervise the digital asset industry.

CCI shared the concern of many of you as we witnessed the downfall of a series of fraudulent actors in the cryptocurrency space in recent months. While the egregious irresponsibility, greed, and fraudulent actions of a few bad actors have affected so many, it is important not to paint the entire industry with one broad brushstroke. CCI’s members want to work closely with government to ensure the marketplace for New Yorkers continues to be safe, responsible, and secure. To that end,

info@cryptocouncil.org

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there are a number of important takeaways from recent experiences that tie directly to the topic of today's hearing.

First, a few bad actors committing old-fashioned fraud must not overshadow the inspiring potential and reality of digital assets. The failures of a few individuals and intermediaries have little to do with the technology underpinning crypto or its ability to transform the future of finance and many other industries. In fact, crypto's underlying infrastructure is already helping reduce the cost of transactions, increase efficiency, and make access more inclusive and democratized.

As one example, cryptocurrencies allow for low-cost and efficient cross-border transactions, making it easier for individuals to send money through remittance payments to their families abroad. In New York City alone, residents send approximately \$10 billion to relatives overseas and were charged more than \$500 million in fees to do so.¹ Traditional financial institutions typically charge between 5-10 percent for remittances. Through crypto, these high fees can be cut down to 1% of the total cost, and the transfer window can shrink from days to a few seconds.²

For the average remittance sender making two to three of these payments each month, the savings adds up and is money that could be saved or spent on the local economy.

Globally, the remittance market shows no signs of slowing; some \$626 billion in remittances were sent in 2022.³ The market is expected to hit nearly \$1 trillion by 2026.⁴ New York's share is expected to rise, and no added benefits are being passed onto consumers.

Second, it is important to examine the broader regulatory landscape in the US, including in New York, to assess where enhancements and improvements can be made to better protect consumers. Currently, there is no comprehensive federal regulation of digital assets. As a novel asset class built on technological underpinnings distinct from traditional financial markets, crypto cuts across many different, existing regulatory arenas. As a result, nearly every federal financial agency has asserted some interest in regulating this space.

The Commodity Futures Trading Commission (CFTC), for example, has determined that certain digital assets, such as Bitcoin, meet the definition of "commodity" under the Commodity Exchange

¹ *Reforming Remittances to Save Money When Sending Money*, YANG FOR NEW YORK, <https://www.yangforny.com/policies/reforming-remittances> (last visited May 22, 2023).

² Kingsley Obinna Alo, *How Bitcoin is Helping African Migrant Workers and Their Families Save Money*, FORKAST, (March 9, 2020), <https://forkast.news/cryptocurrencies-remittance-africa-blockchain-bitcoin-money-transfers-fees/>.

³ Rebecca Ong, *Remittances Grow 5% in 2022, Despite Global Headwinds*, THE WORLD BANK (Nov. 30, 2022) <https://www.worldbank.org/en/news/press-release/2022/11/30/remittances-grow-5-percent-2022>.

⁴ Polly Jean Harrison, *Global Remittance Market is Expected to Grow by \$200 Billion by 2026*, THE FINTECH TIMES (Jun. 29, 2021), <https://thefintechtimes.com/global-remittance-market-is-expected-to-grow-by-200-billion-by-2026>.

Act (CEA).⁵ The CFTC has also indicated that other cryptocurrencies beyond Bitcoin, including Ether and Litecoin, are also commodities.⁶ Under the CEA, however, the CFTC’s jurisdiction over activity involving cash or spot trading in a commodity is limited to enforcement authority provided under the Dodd-Frank Act to police for fraud and manipulation in underlying spot digital commodity markets (i.e., not oversight or supervisory authority). The Securities and Exchange Commission’s (SEC) jurisdiction is implicated when an asset is deemed a security. While the SEC has broadly asserted its enforcement authority and suggested that many cryptocurrencies are securities, it has yet to provide clear guidance regarding when an asset is, in fact, a security.⁷

In the absence of a comprehensive federal regulatory framework, states have developed varied frameworks regarding the supervision and oversight of cryptocurrencies. This occurred following the US Department of the Treasury’s Financial Crimes Network’s (FinCEN) determination in 2013 that cryptocurrency exchanges and intermediaries met the definition of “money transmitter” and are money service businesses (MSBs) under applicable Bank Secrecy Act (BSA) regulations.⁸ As a result, cryptocurrency exchanges and intermediaries that are MSBs were required to register with FinCEN and report any suspicious activity potentially indicative of crime.⁹ Following FinCEN’s determination, many states began to require exchanges to secure a money transmission license (MTL) or statutory equivalent.

This is where New York continues to lead. Unlike the vast majority of other states that license digital asset entities solely as money transmitters, New York was the first state to establish a comprehensive, tailored regulatory framework for virtual currency business activity. This is a framework that many states are now looking to use as a blueprint. This framework features two distinct and robust licensing and chartering regimes—the BitLicense and the LPTC charter—which allow for different types of activity and operate with guardrails tailored to the specific risks that virtual currency creates.¹⁰ Under both regimes, the DFS has focused on requirements relating to

⁵ See *The Future of Digital Assets: Identifying the Regulatory Gaps in the Digital Asset Market Structure: Hearing Before the U.S. House Fin. Services S. Comm. on Digital Assets.*, 118th Cong. 5 (2023) (statement of Daniel Gorfine, CEO, Gattaca Horizons, LLC).

⁶ See *id.* at 5 (citing complaint in *CFTC v. Zhao*, 1:23-cv-01887, (N.D. Ill. Mar. 27, 2023) available at <https://www.cftc.gov/PressRoom/PressReleases/8680-23>).

⁷ See, Sander Lutz, *SEC Chair Gensler Threatens Action Against Unregistered Crypto Exchanges* (May 18, 2022), DECRYPT, <https://decrypt.co/100806/sec-chair-gensler-threatens-action-against-unregistered-crypto-exchanges> (stating to the House Financial Services and General Government Subcommittee that “[t]he crypto exchanges should come in and register . . .”); Public Statement, Chair Gary Gensler, SEC, 2021 *Aspen Security Forum: The View from the SEC: Cryptocurrencies and National Security* (Aug. 3, 2021), YOUTUBE, <https://www.youtube.com/watch?v=tusQLLCgrDs>.

⁸ Financial Crimes Enforcement Network, *New FinCEN Guidance Affirms Its Longstanding Regulatory Framework for Virtual Currencies and a New FinCEN Advisory Warns of Threats Posed by Virtual Currency Misuse* (2019), <https://www.fincen.gov/news/news-releases/new-fincen-guidance-affirms-its-longstanding-regulatory-framework-virtual>.

⁹ See *Hearing Before the U.S. House Fin. Services S. Comm. on Digital Assets*, 118th Cong. (2023) (statement of Daniel Gorfine).

¹⁰ See Adrienne A. Harris, *Testimony Before the U.S. House Financial Services Committee, Subcommittee on Digital Assets, Financial Technology, and Inclusion* (April 10, 2023), available at

capital reserves, prevention of money laundering, operational risk, consumer disclosures and protection, cybersecurity, and more—all of which are subject to examination, reporting, and supervision. The DFS conducts regular examinations of its regulated entities to assess whether such institutions have virtual currency-specific controls in place to protect consumers and that are tailored to the risks presented by the entity’s business model.¹¹ Early on, the DFS recognized the potential of digital assets and the need to regulate them in a way that protects consumers while promoting innovation. Under the leadership of its current Superintendent, we have seen renewed momentum in enhancing the agency’s ability to regulate in this space.

Thoughtful and robust regulation has made New York a leading hub for innovation and economic growth. Crypto start-ups and small businesses based in New York City have raised more capital than companies in any other region of the country, including Silicon Valley and Miami. In 2021, nearly one-half of that capital was raised by New York-based companies¹² and contributed to the growth of more than 3,000 jobs in New York.¹³

We are not here today to solely examine existing regulation but instead to discuss how New York can continue to lead when it comes to consumer protection and responsible innovation. This is a timely discussion as the industry has grown and evolved since DFS enacted both its BitLicense and LPTC frameworks. It is critical, however, to refrain from pursuing duplicative and unnecessary regulation but rather build on the foundation we already have in place.

Before delving into potential enhancements to the existing DFS framework, I wanted to briefly touch upon the Office of Attorney General’s (OAG) recently announced Crypto Regulation, Protection, Transparency, and Oversight (CRPTO) Act. We certainly appreciate the OAG’s recognition of the importance of the crypto industry to New York and the need for continued responsible innovation. This legislation, however, would add a new and unnecessary layer of regulation on top of the existing BitLicense and the LPTC regimes and significantly change the way digital asset businesses, including existing DFS-regulated firms, can conduct activities from or within New York. This would likely drive established and mature firms out of the state entirely, resulting in the loss of thousands of jobs. In addition, this legislation fails to take into account the unique, inherent attributes of digital assets, duplicates existing DFS requirements, requires unnecessary dual registration, and would force businesses to be monoline. This would fail to solve identifiable risks and harm consumers by forcing DFS-regulated firms to relocate from New York. It

<https://docs.house.gov/meetings/BA/BA21/20230419/115753/HHRG-118-BA21-Wstate-HarrisA-20230419.pdf> (hereinafter, “A. Harris Testimony”); *see also* 23 N.Y. CODES, RULES AND REGULATIONS, FIN. SER. ch. 1 pt. 200.

¹¹ *Id.*

¹² Michael Bellusci, *Global VC Funding for Blockchain Firms Surged to Record \$25B in 2021: CB Insights*, COINDESK (Feb. 1, 2022),

<https://www.coindesk.com/business/2022/02/01/global-vc-funding-for-blockchain-firms-surged-to-record-25b-in-2021-cb-insights/>, citing CB Insights, *2021 State of Blockchain Report*.

¹³ BLOCKCHAIN ASSOCIATION & CRYPTO COUNCIL FOR INNOVATION, *THE ECONOMIC IMPACT OF MEMBERS OF BLOCKCHAIN ASSOCIATION AND CRYPTOCOUNCIL OF INNOVATION* (Oxford Economics, 2020), https://theblockchainassociation.org/wp-content/uploads/2022/12/BlockchainAssociationUS_Digital_301122.pdf.

is also unclear how the CRPTO Act would interact, if at all, with DFS’s existing authority and supervision over the digital asset space, creating more confusion and inefficiencies for industry and government alike. Ambiguity and fragmentation would increase the risk of harm to consumers and force DFS-regulated firms to relocate from New York.

Industry stakeholders were not afforded an opportunity to provide any meaningful input in connection with the announced CRPTO Act, despite such potentially devastating impact. We believe that regulation is most effective when the government engages with and hears from industry. Instead of pursuing hasty, duplicative, and inconsistent regulations, we instead encourage improvements to be made to the existing DFS framework by increasing transparency, improving oversight, and ensuring proper funding.

For example, the legislature should encourage DFS to provide greater clarity on consumer protection standards, capital reserve requirements, and operational competency requirements. Rather than detailing such requirements in bespoke, confidential supervisory agreements with regulated entities, these standards should be made public and more uniform. Codifying and improving the DFS framework into law would allow the legislature increased opportunities to provide input and oversight in this regard—addressing, clarifying, and enhancing some of the areas discussed above.

We additionally believe clarity regarding the regulatory process, reviews, and timelines with respect to application and product approvals is needed. It is not uncommon for the timeline from license (or product) application to approval to be significant, sometimes taking years. While we recognize the need for the DFS to evaluate such matters thoroughly, it is also essential to establish clear rules to help set market expectations. For example, addressing what constitutes a “material change” to a BitLicense and the timeline for approval of these changes would be beneficial. Providing reasonable timelines for these reviews would allow for better resource allocations and enhanced operational readiness.

The legislature must also continue to ensure the DFS is properly funded to supervise regulated entities and police the market effectively. We are grateful that the legislature recently provided DFS new funding and enhanced assessment authority to bolster its virtual currency business activity supervision.¹⁴

¹⁴ However, as the CCI has outlined in its letter to DFS when proposing these assessments, we believe that the formula provided for these assessments fails to take into account the complexity of the business itself and only focuses on the amount of transactions across the country. *See* Crypto Council for Innovation, RE: Virtual Currency Licensee Assessments [DFS-03-23-00002-P], CRYPTO COUNCIL FOR INNOVATION (2023), <https://cryptoforinnovation.org/wp-content/uploads/2023/03/CCI-Comment-Letter-for-NYDFS-Virtual-Currency-License-Assessments.pdf>.

To ensure a consistent consumer protection standard, New York should also seek to coordinate with other states to combat cases of fraud and market manipulation. Additionally, standards and best practices regarding consumer disclosures should be developed.

New York further has an opportunity to advance standards and best practices regarding consumer disclosures across states. New York is also a key stakeholder in promoting reciprocity regimes and harmonization amongst and across states that adopt similar protections and regulatory requirements. This can include, for example, coordination of regulated entity exams with other state regulators, identical to how state money transmitter license frameworks coordinate with one another for examination purposes. In addition, reciprocity with other states would avoid redundancy and create a streamlined set of standards and requirements, best protecting New Yorkers and all Americans.

We are at a critical inflection point when it comes to crypto regulation. There continues to be a strong market demand for crypto products, and mature companies like CCI's member firms and those already regulated by the DFS are looking to innovate and develop these products in a compliant manner. In the absence of federal regulation, this is an opportunity for New York to continue to lead and bolster the existing DFS regulatory framework. A government that provides clear legal and business expectations can be a great facilitator for responsible innovation and consumer protection.

There has been incredible innovation in financial services and markets stemming from blockchain technology and cryptocurrencies—and related competition, improving consumer outcomes. Since 2015, New York has led when it comes to comprehensive and thoughtful regulation, which protects consumers and investors while allowing for responsible crypto innovation to flourish in our state. As detailed above, however, it is essential for regulation to diligently keep pace with innovation. As this asset class and technology continue to evolve and new use cases are established by the day, New York can benefit from additional enhancements to the existing DFS framework.

Regulation is most effective when there is a constructive and consistent partnership between government and business stakeholders. CCI and its members are committed to ensuring that New York remains the global hub for this industry. To this end, investment in this transformative industry is not for short-term gain but instead for long-term transformation to improve the lives of many. Central to this is, of course, the need to prioritize protecting New Yorkers. Thoughtful regulation cannot and should not, however, be rushed. New York must continue to be methodical and thoughtful in getting any new regulation right to ensure that it remains the hub for responsible innovation and a global model for consumer protection.