

# STATE OF NEW YORK

9028

## IN ASSEMBLY

January 21, 2022

Introduced by M. of A. VANEL -- read once and referred to the Committee on Science and Technology

AN ACT to amend the general business law, in relation to requiring certain disclosures in advertisements involving virtual tokens

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 section  
2 350-b-2 to read as follows:

3 § 350-b-2. Disclosures required in advertisements involving security  
4 tokens. 1. As used in this section the following terms shall have the  
5 following meanings:

6 (a) "virtual tokens" shall mean security tokens and stablecoins.

7 (b) "security tokens" shall mean any form of fungible and non-fungible  
8 computer code by which all such forms of ownership of said computer code  
9 is determined through verification of transactions or any derivative  
10 method, and that is stored on a peer-to-peer computer network or any  
11 other such computerized system or through any derivative means of stor-  
12 age, and which conforms to one of the following:

13 (i) such class of virtual tokens are advertised by the developer or  
14 another at the developer's direction to be bought and sold for the  
15 purpose of profit, whether or not such purpose is advertised as the sole  
16 purpose;

17 (ii) such class of virtual tokens can be reasonably understood by  
18 members of the public to be bought and sold for the purpose of profit;

19 (iii) the value of such class of virtual tokens is determined by the  
20 supply and demand of the virtual token; and

21 (iv) such class of virtual tokens: (i) are not pegged to an external  
22 source, whether or not such external source is volatile, (ii) are pegged  
23 to another class of virtual token; or (iii) such class of virtual  
24 tokens do not employ technology which prevents large fluctuations in its  
25 price or such technology fails to prevent the same.

26 (c) "stablecoin" shall mean any form of fungible and non-fungible  
27 computer code by which all such forms of ownership of said computer code  
28 is determined through verification of transactions or any derivative

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 method, and that is stored on a peer-to-peer computer network or any  
2 other such computerized system or through any derivative means of stor-  
3 age, and which conforms to all of the following:

4 (i) such class of virtual tokens are not advertised by the developer  
5 or another at the developer's direction to be bought and sold for the  
6 purpose of profit, whether or not such purpose is advertised as the sole  
7 purpose;

8 (ii) such class of virtual tokens cannot be reasonably understood by  
9 members of the public to be bought and sold for the purpose of profit;  
10 and

11 (iii) the value of such class of virtual tokens is not determined by  
12 the supply and demand of the class of virtual token; and

13 (iv) such class of virtual tokens are pegged to an external source,  
14 other than another class of virtual tokens, whether or not such external  
15 source is volatile, or such class of virtual tokens do employ technology  
16 which prevents large fluctuations in its price and such technology  
17 succeeds in preventing the same.

18 (d) "class" shall mean a group of fungible or non-fungible tokens,  
19 irrespective of the amount created, that is intended by the developer to  
20 be:

21 (i) in the case of fungible tokens, valued and exchanged together; or

22 (ii) in the case of non-fungible tokens, regarded as part of the same  
23 group of digital or physical items or valued together with the develop-  
24 er's other non-fungible tokens based on the fact that the non-fungible  
25 tokens were created by a certain developer, taking into account the  
26 developer's notoriety, sale volume, and how he or she is regarded within  
27 virtual token communities.

28 (e) "developer" shall mean the person or persons, whether natural or  
29 otherwise, and any agent or employee thereof who either create in whole  
30 or in part, maintain in whole or in part, or own more than ten percent  
31 of a class of virtual tokens utilizing any technical standard and who  
32 offers them for purchase in the state of New York or, where the sale of  
33 their tokens in the state of New York is prohibited, such person does  
34 not use reasonable efforts to prevent such virtual tokens from being  
35 made available for purchase in the state of New York.

36 (f) "technical standard" shall mean the rules that a class of virtual  
37 tokens shall comply with in order to use the blockchain network or any  
38 derivative means thereof.

39 (g) "non-fungible token" shall mean a virtual token used to denote on  
40 the blockchain ownership of any digital or physical item or any deriva-  
41 tive means thereof.

42 (h) "fungible token" shall mean any virtual token stored on the block-  
43 chain other than non-fungible tokens.

44 (i) "owned" and "ownership" shall mean the means by which ownership of  
45 a digital asset is noted on the blockchain or any derivative means ther-  
46 eof.

47 (j) "token" shall mean the technical standard used to create a fungi-  
48 ble or non-fungible piece of computer code.

49 (k) "wallet" shall mean a device, program, or service which stores the  
50 public and/or private keys for virtual token transactions.

51 (l) "blockchain" shall mean any type of technology which stores code  
52 on a database of which said database represents the record of trans-  
53 actions that make up virtual tokens or any derivative technology.

54 (m) "private key" shall mean the unique identifier of a wallet, or any  
55 substantially similar analogue, that is paired with a publicly available

1 identifier and associated with an algorithm that is necessary to carry  
2 out an encryption or decryption required to execute a transaction.

3 (n) "advertisement" shall mean and include but not be limited to any  
4 public notice, circular, advertisement, newspaper, article, letter,  
5 investment service, or communication to more than one person whether  
6 directly or indirectly.

7 2. It shall be unlawful for any person, whether natural or otherwise,  
8 or any agent or employee thereof to give publicity to or circulate any  
9 advertisement, which, though not purporting to offer a class of security  
10 tokens for sale, describes such class of security tokens that are  
11 created by a developer seeking such advertisement for consideration,  
12 whether directly or indirectly, without fully disclosing the receipt,  
13 whether past or prospective, of the amount thereof, and whether such  
14 consideration is made directly or indirectly and in the past or prospec-  
15 tively, a description in accordance with subdivision four of this  
16 section for:

17 (a) the same class of security tokens;

18 (b) a different class of security tokens created by the same develop-  
19 er;

20 (c) the same or a different class of security tokens created by the  
21 same developer and other consideration, whether a class of security  
22 tokens or otherwise;

23 (d) a different class of security tokens that is intended to increase  
24 in price in conjunction with the advertisement of the class of security  
25 tokens advertised, whether or not such class of security tokens was  
26 created by the same developer;

27 (e) a pre-public offering to purchase any of the security tokens  
28 described in paragraphs (a) through (d) of subdivision one of this  
29 section whether or not such security tokens are actually purchased;

30 (f) a post-public offering to purchase any of the security tokens  
31 described in paragraphs (a) through (d) of subdivision one of this  
32 section for a reduced price, whether or not such security tokens are  
33 actually purchased; or

34 (g) a post-public notification of the existence of any of the security  
35 tokens described in paragraphs (a) through (d) of subdivision one of  
36 this section that is intended to be prior to an anticipated influx of  
37 purchasers that will raise the price of the security tokens, whether or  
38 not such security tokens are actually purchased.

39 3. The advertiser shall have an affirmative duty to use reasonable  
40 efforts to determine whether the class of security tokens paid to him or  
41 her were created by the same developer and whether such security tokens  
42 were intended to increase in price in conjunction with the advertisement  
43 of the security token advertised.

44 4. The form of disclosure shall:

45 (a) be written on each advertisement in a sufficiently readable type-  
46 face or, where such advertisement is auditory in nature, stated in a  
47 clear and understandable tone prior to the auditory statement;

48 (b) in the case of the same security token advertised being paid in  
49 consideration, a statement stating the exact amount of tokens provided,  
50 the date that they were provided, and the type of token provided;

51 (c) in the case of a different security token created by the same  
52 developer, a statement stating the exact amount of tokens provided, the  
53 date that they were provided, the type of token provided, and a state-  
54 ment that the security token provided was created by the same developer  
55 as the security token being advertised;

1 (d) in the case of the same or a different class of security tokens  
2 and other consideration, whether security tokens or otherwise, a state-  
3 ment stating the exact amount of tokens provided, the date that they  
4 were provided, the type of token provided, if the security token is  
5 different from the advertisement, a statement that the security token  
6 provided was created by the same developer as the security token being  
7 advertised, and a description of the other consideration provided howev-  
8 er that if such other consideration conforms to any of the provisions of  
9 subdivision two of this section, then a statement conforming with its  
10 respective provision in this section;

11 (e) in the case of a different class of security tokens that is  
12 intended to increase in price in conjunction with the advertisement of  
13 the class of security tokens advertised, a statement stating the exact  
14 amount of tokens provided, the date that they were provided, the type of  
15 token provided, and a statement stating the security token that is  
16 intended to increase in conjunction with the advertisement and that such  
17 security token is intended by the developer to increase with the adver-  
18 tisement of the security token being advertised;

19 (f) in the case of a pre-public offering to purchase any of the secu-  
20 rity tokens described in paragraphs (a) through (d) of subdivision one  
21 of this section, if an exact amount of security tokens are offered, a  
22 statement stating the exact amount of security tokens offered, if an  
23 unlimited amount of security tokens are offered, a statement stating  
24 that the developer has offered the advertiser to purchase an unlimited  
25 amount of tokens, and in either case, the date that the offering was  
26 made, the date which the advertiser may purchase the security tokens at  
27 the pre-public price and the type of token provided. The advertiser  
28 shall be prohibited from disclosing or making public whether he or she  
29 actually purchased the security token stated;

30 (g) in the case of a post-public offering to purchase any of the secu-  
31 rity tokens described in paragraphs (a) through (d) of subdivision one  
32 of this section for a reduced price, if an exact amount of security  
33 tokens are offered, a statement stating the exact amount of security  
34 tokens offered, if an unlimited amount of security tokens are offered, a  
35 statement stating that the developer has offered the advertiser to  
36 purchase a limitless amount of tokens, and in either case, the date that  
37 the offering was made, the date which the advertiser may purchase the  
38 security tokens at the reduced price and the type of token provided. The  
39 advertiser shall be prohibited from disclosing or making public whether  
40 he or she actually purchased the security token stated;

41 (h) in the case of a post-public notification of the existence of any  
42 of the security tokens described in paragraphs (a) through (d) of subdi-  
43 vision one of this section that is intended to be prior to an antic-  
44 ipated influx of purchasers that will raise the price of the security  
45 token, a statement stating the date that the advertiser was notified of  
46 the existence of the security token, the approximate price of the secu-  
47 rity token at the time of the notification, whether the advertiser actu-  
48 ally purchased the security token, and, if the advertiser did in fact  
49 purchase the security token, the amount that the advertiser purchased of  
50 the security token and the amount purchased;

51 (i) in the case where such consideration is prospective and includes  
52 any of the items required to be disclosed pursuant to subdivision two of  
53 this section, a statement describing the method by which such consider-  
54 ation will be paid prospectively, the type of account or other person or  
55 entity in which such consideration is stored, if any, that it is being  
56 held in, the date that such consideration will be released and the

1 person or entity that such consideration will be released to, and a  
2 statement satisfying the provision that such consideration conforms to;  
3 and

4 (j) in the case of a combination of any of the foregoing provisions of  
5 this subdivision, a statement satisfying each provision.

6 § 2. This act shall take effect on the thirtieth day after it shall  
7 have become a law. Effective immediately, the addition, amendment  
8 and/or repeal of any rule or regulation necessary for the implementation  
9 of this act on its effective date are authorized to be made and  
10 completed on or before such effective date.