STATE OF NEW YORK

8838

IN SENATE

April 22, 2022

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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:

Section 1. The general business law is amended by adding a new section 350-b-2 to read as follows:

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

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

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

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

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

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

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

(c) "stablecoin" shall mean any form of fungible and non-fungible computer code by which all such forms of ownership of said computer code 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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method, and that is stored on a peer-to-peer computer network or any other such computerized system or through any derivative means of storage, and which conforms to all of the following:

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

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

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

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

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

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

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

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

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

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

(h) "fungible token" shall mean any virtual token stored on the blockchain other than non-fungible tokens.

(i) "owned" and "ownership" shall mean the means by which ownership of a digital asset is noted on the blockchain or any derivative means thereof.

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

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

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

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

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

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

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

(a) the same class of security tokens;

(b) a different class of security tokens created by the same developer;

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

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

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

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

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

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

4. The form of disclosure shall:

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

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

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

(d) in the case of the same or a different class of security tokens and other consideration, whether security tokens or otherwise, a statement stating the exact amount of tokens provided, the date that they were provided, the type of token provided, if the security token is different from the advertisement, a statement that the security token provided was created by the same developer as the security token being advertised, and a description of the other consideration provided however that if such other consideration conforms to any of the provisions of subdivision two of this section, then a statement conforming with its respective provision in this section;

(e) in the case of a different class of security tokens that is intended to increase in price in conjunction with the advertisement of the class of security tokens advertised, a statement stating the exact amount of tokens provided, the date that they were provided, the type of token provided, and a statement stating the security token that is intended to increase in conjunction with the advertisement and that such security token is intended by the developer to increase with the advertisement of the security token being advertised;

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

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

(h) in the case of a post-public notification of the existence of any of the security tokens described in paragraphs (a) through (d) of subdivision one of this section that is intended to be prior to an anticipated influx of purchasers that will raise the price of the security token, a statement stating the date that the advertiser was notified of the existence of the security token, the approximate price of the security token at the time of the notification, whether the advertiser actually purchased the security token, and, if the advertiser did in fact purchase the security token, the amount that the advertiser purchased of the security token and the amount purchased;

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

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

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

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