STATE OF NEW YORK

9275

IN SENATE

May 12, 2022

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Internet 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:

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 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;

(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 tokens, or 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;

(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, or 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; and

(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 is 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.

3. The form of disclosure shall 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.

§ 2. This act shall take effect immediately.