

DIGITAL ASSETS

34-29-101. Definitions.

(a) As used in this chapter:

(i) "Digital asset" means a representation of economic, proprietary or access rights that is stored in a computer readable format and is either a digital consumer asset, digital security or virtual currency;

(ii) "Digital consumer asset" means a digital asset that is used or bought primarily for consumptive, personal or household purposes and includes:

(A) An open blockchain token constituting intangible personal property as otherwise provided by law;

(B) Any other digital asset which does not fall within paragraphs (iii) and (iv) of this subsection.

(iii) "Digital security" means a digital asset which constitutes a security, as defined in W.S. 17-4-102(a)(xxviii), but shall exclude digital consumer assets and virtual currency;

(iv) "Virtual currency" means a digital asset that is:

(A) Used as a medium of exchange, unit of account or store of value; and

(B) Not recognized as legal tender by the United States government.

(b) The terms in paragraphs (a)(ii) through (iv) of this section are mutually exclusive.

34-29-102. Classification of digital assets as property; applicability to Uniform Commercial Code; application of other law.

(a) Digital assets are classified in the following manner:

(i) Digital consumer assets are intangible personal property and shall be considered general intangibles, as defined

in W.S. 34.1-9-102(a)(xlii), only for the purposes of article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes;

(ii) Digital securities are intangible personal property and shall be considered securities, as defined in W.S. 34.1-8-102(a)(xv), and investment property, as defined in W.S. 34.1-9-102(a)(xlix), only for the purposes of articles 8 and 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes;

(iii) Virtual currency is intangible personal property and shall be considered money, notwithstanding W.S. 34.1-1-201(b)(xxiv), only for the purposes of article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes.

(b) Consistent with W.S. 34.1-8-102(a)(ix), a digital asset may be treated as a financial asset under that paragraph, pursuant to an agreement with the owner of the digital asset. If treated as a financial asset, the digital asset shall remain intangible personal property.

(c) A bank providing custodial services under W.S. 34-29-104 shall be considered to meet the requirements of W.S. 34.1-8-102(a)(xiv).

(d) Classification of digital assets under this section shall be construed in a manner to give the greatest effect to this chapter, but shall not be construed to apply to any other asset.

(e) This chapter shall be considered a consumer protection statute for the purposes of W.S. 34.1-9-201(b).

34-29-103. Perfection of security interests in digital assets; control; possession; security agreements; location.

(a) Notwithstanding the financing statement requirement specified by W.S. 34.1-9-310(a) as otherwise applied to general intangibles or any other provision of law, perfection of a security interest in virtual currency may be achieved through possession and perfection of a security interest in digital securities may be achieved by control. A security interest held by a secured party having possession or control, as applicable, of virtual currency or digital securities has priority over a security interest held by a secured party that does not have possession or control, as applicable. Other provisions of law relating to perfection and priority of security interests,

including W.S. 34.1-9-322(c) and priority of control over delivery, shall apply, except that W.S. 34.1-9-322(a)(i) and (b) shall not apply. W.S. 34.1-9-207 shall apply to this section.

(b) Before a secured party may take possession or control under this section, the secured party shall enter into a security agreement with the debtor and, as necessary, other parties. The security agreement may set forth the terms under which a secured party may pledge its security interest as collateral for another transaction. Consistent with W.S. 34.1-9-201(a), the security agreement shall be effective according to its terms between parties, against purchasers of collateral and against creditors.

(c) If a debtor is located in Wyoming, a secured party may file a financing statement with the secretary of state to perfect a security interest in digital consumer assets or digital securities, including to perfect a security interest in proceeds pursuant to W.S. 34.1-9-315(d).

(d) Notwithstanding any other provision of law, including article 9 of the Uniform Commercial Code, title 34.1, Wyoming statutes, a transferee takes a digital asset free of any security interest two (2) years after the transferee takes the asset for value and does not have actual notice of an adverse claim at any time during the two (2) year period. This subsection only applies to a security interest perfected by filing.

(e) As used in this section:

(i) "Control," when used in article 9, title 34.1, Wyoming statutes and this section, consistent with W.S. 34.1-9-314, includes the following:

(A) A secured party, or an agent, custodian, fiduciary or trustee of the party, has complied with W.S. 34.1-8-106, including by means of a private key or the use of a multi-signature arrangement exclusive to the secured party or any substantially similar analogue;

(B) Use of a smart contract created by a secured party to comply with W.S. 34.1-8-106. As used in this subparagraph, "smart contract" means an automated transaction, as defined in W.S. 40-21-102(a)(ii), or any substantially similar analogue, which is comprised of code, script or programming language that executes the terms of an agreement,

and which may include taking custody of and transferring an asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

(ii) "Multi-signature arrangement" means a system of access control relating to a digital asset for the purposes of preventing unauthorized transactions relating to the asset, in which two (2) or more private keys are required to conduct a transaction, or any substantially similar analogue;

(iii) "Private key" means a unique element of cryptographic data, or any substantially similar analogue, which is:

(A) Held by a person;

(B) Paired with a unique, publicly available element of cryptographic data; and

(C) Associated with an algorithm that is necessary to carry out an encryption or decryption required to execute a transaction.

(iv) "Possession," when used in article 9, title 34.1, Wyoming statutes and this section, consistent with 34.1-9-313, means the ability to exclude others from the use of property, and includes use of a private key, a multi-signature arrangement exclusive to the secured party or a smart contract, as defined in this subsection, or any substantially similar analogue. "Possession" shall also include delivery of certificated digital securities, consistent with W.S. 34.1-8-301(a).

(f) Perfection by possession creates a possessory security interest under W.S. 34.1-9-301(a)(ii) in virtual currency or certificated digital securities, based on the possessory nature of a private key or any substantially similar analogue, which may be tangible or electronic.

(g) For purposes of article 9, title 34.1 and this section, if collateral is required to be "located in a jurisdiction," a digital asset is located in Wyoming if the asset is possessed or controlled by a Wyoming bank, trust company or other custodian, the debtor or secured party is physically located in Wyoming or the debtor or secured party is

incorporated or organized in Wyoming, based on the following factors:

(i) Whether a security agreement typically accompanying a possessory security interest or other secured transaction exists, consistent with W.S. 34.1-9-201(a), including an agreement describing the possessory nature of a private key or any substantially similar analogue;

(ii) Choice of law in a security agreement, evidencing the intent and understanding of the parties relating to a transaction, including waivers of litigation in jurisdictions other than Wyoming, access to the Wyoming chancery court and judicial economy; and

(iii) The relative clarity of the laws of other jurisdictions relating to a digital asset, consequences relating to unknown liens in those jurisdictions and the ability of a court to exercise jurisdiction over a particular digital asset.

34-29-104. Digital asset custodial services.

(a) A bank may provide custodial services consistent with this section upon providing sixty (60) days written notice to the commissioner. The provisions of this section are cumulative and not exclusive as an optional framework for enhanced supervision of digital asset custody. If a bank elects to provide custodial services under this section, it shall comply with all provisions of this section.

(b) A bank may serve as a qualified custodian, as specified by the United States securities and exchange commission in 17 C.F.R. § 275.206(4)-2, or as a custodian authorized by the United States commodity futures trading commission or other law. In performing custodial services under this section, a bank shall:

(i) Implement all accounting, account statement, internal control, notice and other standards specified by applicable state or federal law and rules for custodial services;

(ii) Maintain information technology best practices relating to digital assets held in custody. The commissioner may specify required best practices by rule;

(iii) Fully comply with applicable federal anti-money laundering, customer identification and beneficial ownership requirements; and

(iv) Take other actions necessary to carry out this section, which may include exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing digital assets classified as commodities.

(c) A bank providing custodial services shall conform to the audit, accounting and related requirements specified by the commissioner and applicable law, which may include entering into an agreement with an independent public accountant to conduct an examination conforming to the requirements of 17 C.F.R. § 275.206(4)-2(a)(4) and (6), at the cost of the bank. An accountant shall transmit the results of any examination to the commissioner within one hundred twenty (120) days of the examination and may file the results with other regulatory agencies as their rules may provide. Material discrepancies in an examination shall be reported to the commissioner within one (1) day. The commissioner shall review examination results upon receipt within a reasonable time and during any regular examination conducted under W.S. 13-3-702.

(d) Digital assets held in custody under this section are not depository liabilities or assets of the bank. A bank, or a subsidiary, may register as an investment adviser, investment company or broker dealer as necessary. A bank shall maintain possession or control, as applicable, over a digital asset while in custody. A customer shall elect, pursuant to a written agreement with the bank, one (1) of the following relationships for each digital asset held in custody:

(i) Custody under a bailment as a nonfungible or fungible asset. Assets held under this paragraph shall be strictly segregated from other assets; or

(ii) Custody pursuant to subsection (e) of this section.

(e) If a customer makes an election under paragraph (d)(ii) of this section, the bank may, based only on customer instructions, undertake transactions with the digital asset. A bank is deemed to maintain possession or control pursuant to subsection (d) of this section by entering into an agreement with the counterparty to a transaction which contains a time for

return of the asset and other customary terms in securities or commodities transactions. The bank shall not be liable for any loss suffered with respect to a transaction under this subsection, except for liability consistent with fiduciary and trust powers.

(f) A bank and a customer shall agree in writing regarding the source code version the bank will use for each digital asset, and the treatment of each asset under the Uniform Commercial Code, title 34.1, Wyoming statutes if necessary. Any ambiguity under this subsection shall be resolved in favor of the customer.

(g) A bank shall provide clear, written notice to each customer, and require written acknowledgement, of the following:

(i) Prior to the implementation of any updates, material source code updates relating to digital assets held in custody, except in emergencies which may include security vulnerabilities;

(ii) The heightened risk of loss from transactions under subsection (e) of this section;

(iii) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under paragraph (d)(ii) of this section;

(iv) That custody under paragraph (d)(ii) of this section may not result in the digital assets of the customer being strictly segregated from other customer assets; and

(v) That the bank is not liable for losses suffered under subsection (e) of this section, except for liability consistent with fiduciary and trust powers.

(h) A bank and a customer shall agree in writing to a time period within which the bank must return a digital asset held in custody under this section. If a customer makes an election under paragraph (d)(ii) of this section, the bank and the customer may also agree in writing to the form in which the digital asset shall be returned.

(j) All ancillary or subsidiary proceeds relating to digital assets held in custody under this section shall accrue to the benefit of the customer, except as specified by a written agreement with the customer. The bank may elect not to collect

certain ancillary or subsidiary proceeds, as long as the election is disclosed in writing. A customer who makes an election under paragraph (d)(i) of this section may withdraw the digital asset in a form that permits the collection of the ancillary or subsidiary proceeds.

(k) A bank shall not authorize or permit rehypothecation of digital assets under this section. The bank shall not engage in any activity to use or exercise discretionary authority relating to a digital asset except based on customer instructions.

(m) A bank shall not take any action under this section which would likely impair the solvency or the safety and soundness of the bank, as determined by the commissioner after considering the nature of custodial services customary in the banking industry.

(n) To offset the costs of supervision and administration of this section, a bank which provides custodial services under this section shall pay a supervision fee equal to two-tenths of one mill on the dollar (\$.0002) relating to assets held in custody as provided by rule of the commissioner. The supervision fee shall be deposited by the commissioner into the financial institutions administration account and may be expended for any purpose authorized for that account. Fees charged and collected under this subsection shall be reported as required by W.S. 13-1-603(e).

(o) The commissioner may adopt rules to implement this section.

(p) As used in this section:

(i) "Bank" has the meaning ascribed to it in W.S. 13-1-101(a)(i);

(ii) "Commissioner" means the banking commissioner;

(iii) "Custodial services" means the safekeeping, servicing and management of customer currency and digital assets. This term includes the exercise of fiduciary and trust powers involving the exercise of discretion, including transactions under subsection (e) of this section.

34-29-105. Jurisdiction of courts.

Subject to other jurisdictional limits placed on specific courts by Wyoming law, the courts of Wyoming shall have jurisdiction to hear claims in both law and equity relating to digital assets, including those arising from this chapter and the Uniform Commercial Code, title 34.1, Wyoming statutes.

34-29-106. Wyoming Utility Token Act; open blockchain tokens classified as intangible personal property; characteristics; filing requirements; fee; enforcement authority; definitions; virtual currency.

(a) This section may be cited as the "Wyoming Utility Token Act."

(b) An open blockchain token with the following characteristics constitutes intangible personal property:

(i) The predominant purpose of the token is consumptive, as defined in paragraph (g)(ii) of this section;

(ii) The developer or seller did not market the token to the initial buyer as a financial investment, as defined in paragraph (g)(v) of this section; and

(iii) At least one (1) of the following subparagraphs is satisfied:

(A) The developer or seller reasonably believed that it sold the token to the initial buyer for a consumptive purpose;

(B) The token has a consumptive purpose that is available at or near the time of sale and can be used at or near the time of sale for a consumptive purpose;

(C) The initial buyer of the token is prohibited by the developer or seller of the token from reselling the token until the token is available to be used for a consumptive purpose;

(D) The developer or seller takes other reasonable precautions to prevent an initial buyer from purchasing the token as a financial investment.

(c) Before making an open blockchain token under subsection (b) of this section available for sale, the developer or seller of a token, or the registered agent of the developer or seller, shall electronically file a notice of intent with the secretary of state and pay a filing fee of one thousand dollars (\$1,000.00) to offset the costs of administering this section. The notice of intent shall contain the name of the person acting as a developer or seller, the contact information of the person, or the registered agent of the person and comprehensive details on the open blockchain token under subsection (b) of this section made available for sale, as required by the secretary of state. A form shall be made available by the secretary of state for this purpose, which shall include a secure electronic form conspicuously posted on the internet website of the secretary of state. A developer, seller and the registered agent of these persons, if applicable, shall have a continuing duty to update the contact information provided on a notice of intent as long as the open blockchain token associated with the notice is actively being sold.

(d) A facilitator shall comply with the following requirements:

(i) A facilitator shall, before making any token available for resale to the public, confirm with the secretary of state that a notice of intent has been filed pursuant to subsection (c) of this section;

(ii) A facilitator shall, at all times, have a reasonable and good faith belief that a token subject to resale conforms to the requirements of paragraphs (b)(i) through (iii) of this section; and

(iii) The facilitator shall take reasonably prompt action to terminate the resale of a token which does not conform to the requirements of this subsection.

(e) A willful failure by a developer, seller or facilitator to comply with the duties imposed by this section shall constitute an unlawful trade practice under W.S. 40-12-105(a)(xvii). A developer, seller or facilitator is subject to all applicable criminal statutes, including the fraud provisions of W.S. 6-3-601 through 6-3-615.

(f) The secretary of state may refer the following to appropriate state or federal agencies for investigation,

criminal prosecution, civil penalties and other appropriate enforcement actions:

(i) Suspected violations of this section;

(ii) The developer, seller or facilitator of either an open blockchain token which conforms to the requirements of this section or another digital asset which substantially resembles an open blockchain token, but which, in the determination of the secretary of state, is being sold for financial investment or fraudulent purposes.

(g) As used in this section:

(i) "Blockchain" means a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature;

(ii) "Consumptive" means a circumstance when a token is exchangeable for, or provided for the receipt of, services, software, content or real or tangible personal property, including rights of access to services, content or real or tangible personal property;

(iii) "Developer" means the person primarily responsible for creating an open blockchain token or otherwise designing the token, including by executing the technological processes necessary to create the token;

(iv) "Facilitator" means a person who, as a business, makes open blockchain tokens under subsection (b) of this section available for resale to the public after a token has been purchased by an initial buyer;

(v) "Financial investment" means a contract, transaction or arrangement where a person invests money in a common enterprise and is led to expect profits solely from the efforts of a promoter or a third party;

(vi) Except as otherwise provided in subsection (h) of this section, "open blockchain token" means a digital unit which is:

(A) Created:

(I) In response to the verification or collection of a specified number of transactions relating to a digital ledger or database;

(II) By deploying computer code to a digital ledger or database, which may include a blockchain, that allows for the creation of digital tokens or other units; or

(III) Using a combination of the methods specified in subdivisions (I) and (II) of this subparagraph.

(B) Recorded to a digital ledger or database, which may include a blockchain; and

(C) Capable of being traded or transferred between persons without an intermediary or custodian of value.

(vii) "Seller" means a person who makes an open blockchain token available for purchase to an initial buyer.

(h) Virtual currency or a digital security, as defined in subsection (a) of this section, shall not constitute an open blockchain token.