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To: The Honorable C. T. Wilson
Chair, Economic Matters Committee

From: Wilson M. Meeks - Consumer Protection Division

Re: House Bill 1204 - Decentralized Financial Regulatory Sandbox Program (OPPOSE)

The Consumer Protection Division of the Office of the Attorney General opposes House Bill 1204, sponsored by Delegate Grammer. House Bill 1204 would create a "Decentralized Financial Regulatory Sandbox Program" allowing financial market participants whose applications are approved by the Office of the Commissioner of Financial Regulation in the Maryland Department of Labor (the "Office") to "test" on Maryland consumers unproven "innovative decentralized financial products or services" for at least twelve months without obtaining otherwise required licenses, registrations, or other authorizations. It would also exempt successful applicants from "state laws, regulations, or licensing or authorization requirements identified" that they identify in their program applications. House Bill 1204 defines "innovative decentralized financial products or services" as those that "generally require a license, registration, or other authorization in the state" and use "new or emerging technology or a new use of existing technology [to] ... offer a product, service, business model, or delivery mechanism that is not known by the Office to have a comparable widespread offering in the State."

The Division opposes House Bill 1204 because it exposes Maryland consumers to potential financial exploitation by removing existing protections, apparently on the false premise that exempting untested financial products from consumer protection laws is necessary for innovation, or that supposedly innovative products' use of technology will somehow reduce the risk of consumer abuse. The reality is that the risks posed by any "innovative" financial product and service can be significant for consumers, and Maryland's financial system. The financial crisis, which negatively impacted tens of millions of consumers and nearly crippled the American economy, was largely the result of dangerous adjustable-rate mortgages and similarly "innovative" financial products.¹ The Division is aware from experience taking enforcement actions against unscrupulous companies that supposed "innovations" in financial products can really be attempts to evade interest rate caps, disclosure requirements, etc. to exploit financially vulnerable or

¹ See Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report* (Jan. 2011) (attributing the financial crisis largely to risky subprime lending products and tactics).

unsophisticated consumers.²

A financial product's use of "emerging" technology does not alleviate these concerns. Many supposedly "innovative" fintech products are just variations on older financial products and services – they offer loans, deposit accounts, transmit money, and the like – yet they can add layers of uncertainty and risk. Using crypto currencies can inject significant volatility into products; long-entrenched inequalities in accessing and the cost of financial products can be exacerbated via algorithmic underwriting; financial transactions via technology implicate important data security, anti-fraud, and privacy concerns (many products require your banking information); and the use of slick mobile apps or websites can obfuscate a product's risk, costs, or even how it works.³

Although the above facts counsel heavily in favor of a careful regulatory approach to new financial products using emerging technology, House Bill 1204 does the opposite. While its broad definition of "innovative decentralized financial product or service" encompasses nearly any product that tweaks technology, the bill replaces deliberate licensing requirements with a spare application process that has few prerequisites, largely relies on company's representations and promises, provides little time for review, and does not provide for public input. Nor does the bill have meaningful procedures for monitoring a product's performance or a participant's behavior after approval, even as the bill's required disclosures to consumers that the product is "authorized" under the program and "may expose the consumer to financial risk" are facially inadequate given the above-discussed concerns, and the required disclosure that the participant is "not immune" from unspecified "civil liability" for losses may provide consumers a false sense of security. Moreover, the increased risk to consumers seems pointless. The Commissioner's Office already has a designated "Innovation Contact" to, among other things, "assist entrepreneurs."⁴ There is no evidence the Division is aware of that the current process is insufficient for innovation.

The Division opposes HB 1204 because it would unnecessarily exempt certain financial market participants from existing regulatory protections thereby placing consumers at risk and requests that the Economic Matters Committee issue an Unfavorable Report.

cc: Members, Economic Matters Committee
Honorable Robin L. Grammer, Jr.

² See www.marylandattorneygeneral.gov/Press/2019/041719a.pdf (press release for action against Future Income Payments, a predatory lender of "pension advances"); www.marylandattorneygeneral.gov/Press/2020/022120.pdf (press release for action against Cash-and-Go, a predatory lender of "vehicle title pawns"); *B&S Mktg. Enterprises, LLC v. Consumer Prot. Div.*, 153 Md. App. 130 (2003) (action against company attempting to evade consumer protections through masking convoluted loans as "sale-leaseback-repurchases").

³ See NATIONAL CONSUMER LAW CENTER, Lauren Saunders, *Fintech and Consumer Protection, A Snapshot* (March 2019) (discussing consumer protection implications of using emerging technology to offer financial products and services).

⁴ See, www.dllr.state.md.us/finance/industry/frfintech.shtml (Innovation Contact webpage).