Via Federal eRulemakingPortal
https://www.regulations.gov/docket/CFPB-2025-0003
and Email
2025-Emerging-Payments-Interpretive-Rule@cfpb.gov

March 20, 2024

The Honorable Scott Bessent
Acting Director
Consumer Financial Protection Bureau
1700 G Street
Washington, D.C. 205502

Re: Comment on the Proposed Rule on Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emerging Payment Mechanisms, CFPB-2025-0003

Dear Acting Director Bessent:

Consensys Software Inc. ("Consensys") is writing to comment on the Consumer Financial Protection Bureau's ("CFPB") proposed interpretive rule put forward by the outgoing Biden Administration in January 2025 ("Proposed Interpretive Rule") that redefines unhosted blockchain wallet software as financial institutions for purposes of the Electronic Funds Transfer Act and its implementing regulation, Regulation E (collectively for purposes of this letter the "EFTA"). It is our view that this proposal is clearly improper as a matter of substantive law, public policy, and administrative procedure. We would respectfully direct your attention to the comment letter submitted by the Blockchain Association, of which Consensys is a member, and the DeFi Education Fund. Consensys fully endorses and incorporates herein that letter and believes it persuasively substantiates our concerns with the Proposed Interpretive Rule. We supplement the arguments in that letter with the commentary below, which comes from our perspective as one of the most prominent U.S.-based unhosted wallet developers in the entire crypto ecosystem.

In short, the Proposed Interpretive Rule is a radical departure from current law, would create an overly expansive regulatory regime that would negatively impact both blockchain developers and users, would be practically impossible to comply with for wallet developers, and would plainly be an improper attempt to evade important legislative deliberation or even the non-negotiable agency rulemaking procedures. The Proposed Interpretive Rule should be removed from the CFPB's regulatory agenda forthwith.

Overview of Consensys and the Ethereum blockchain network

Consensys is a leading software company building tools and services primarily on the Ethereum network, which is the largest programmable blockchain in the world. Ethereum, in short, is the most credibly neutral and censorship resistant computer in the world, as it is operated by a decentralized community of self-selecting contributors and participants. Currently, Ethereum supports a stablecoins supply of around $125 billion, a decentralized finance ecosystem with total value locked (often referred to as "TVL") of around $65 billion, and tokenized assets valued around $4 billion.[1]

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[1] *See, e.g.,* https://www.theblock.co/data/on-chain-metrics/ethereum (last visited March 20, 2025).

Consensys provides software tools for builders to create and deploy software applications on Ethereum and other similar blockchain networks, and for users to interact with these applications and thereby create new social and economic networks in cyberspace. Our software suite includes, among other products, MetaMask, the leading unhosted (also interchangeably referred to as "self-custodial" or "self-hosted") wallet for over 100 million users annually, Infura, a platform for web3 development, and Linea, a Layer 2 protocol for aggregating transactions using Ethereum functionality with high throughput, low gas fees, and the security of Ethereum settlement. Additionally, Consensys Staking helps users, both consumers and institutions alike, engage in staking transactions while eliminating risk, complexity, and reliance on third parties.[2]

Consensys is not an exchange and is not the issuer of a blockchain token. It is very much on the technology side of the blockchain ecosystem as opposed to the investment side of the ecosystem, the latter of which has captured the majority of the public's and policymakers' attention.[3] Consensys's product offerings and initiatives in the digital asset ecosystem are designed to bolster technological development in and use of Ethereum and other blockchain protocols. Consistent with that overarching goal, we believe it is critical to the U.S.'s participation in blockchain technology development and the computer networks, applications and tokenized ecosystems that are being created, that federal law and regulations pertaining to digital assets do not unduly burden Americans from participating in this space or otherwise encourage the technology to move offshore. We regularly submit comments in response to agency consultations, including notices of proposed rulemakings where we feel that our perspective may be of some assistance to the rulemaking agency as they consider either a blockchain-specific issue or some issue that may have some intended or unintended impacts on the blockchain space.

The Proposed Interpretive Rule improperly reclassifies unhosted wallets as financial institutions

Unhosted wallets are not engaged in electronic fund transfers ("EFTs") in a manner akin to financial institutions. Rather, they are software applications which essentially combine a web browser with a password protector. Just as the Google Chrome, Microsoft Edge, or Safari browsers provide a mechanism for web users to read and write to the internet, unhosted wallets like MetaMask allow users to read and write to the blockchain. Moreover, just like those widely used browser applications offer password management features, unhosted wallet software offers a native way to securely store and use the wallet holder's private key. That private key is the password required for a user to control the accounts the user has on a particular blockchain.

A key difference between unhosted wallets and financial institutions is that, while a customer account sits with the financial institution, it is on the blockchain and not with the wallet application that the digital asset "account" is located. To operate a MetaMask wallet, a user can create a public-private key pair using the interface or import a "secret recovery phrase" that represents the password to an existing blockchain account. The data relating to the digital assets accessible through the wallet is all on the blockchain itself, not with the wallet. The MetaMask application, for instance, does not create any independent account for the user that is distinct from the public address and its private key. This is a feature of unhosted wallets, in that users can rely on them to be very private. Because it is unneeded for any technical purpose, MetaMask does not collect or retain any personally identifiable information ("PII") on any of its users. Users can also rely on the interoperability of the blockchain account. Should the user be dissatisfied with MetaMask and prefer to use a different wallet interface, the blockchain account is readily accessed by importing the secret recovery phrase into different wallet software and thus gaining

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[2] A full list and description of Consensys offerings may be found at www.consensys.io.

[3] *See* Bill Hughes, *Opinion: Money Crypto versus Tech Crypto* (CoinDesk, Nov. 7, 2022), https://www.coindesk.com/layer2/2022/11/07/money-crypto-versus-tech-crypto/.

full control over the blockchain account through a different interface. The account belongs to the user and the user has unfettered freedom to use the wallet of his or her choice.

For purposes of the Propose Interpretive Rule, it is critical to understand just how dissimilar something like MetaMask is from the normal financial institution customer account. Consensys cannot access any funds a user manages through use of the MetaMask wallet. We cannot freeze the blockchain account, access or disable the user's private address, or move the users' funds. In point of fact, we explicitly instruct users to not share their private key or secret recovery phrase with Consensys or anyone else. Users are extensively warned that the freedom which comes with controlling your own assets comes with the burden and responsibility of ensuring a cyber security posture that keeps them secure.

When a MetaMask user sends a transaction, those transactional instructions are cryptographically signed on the user's machine (whether it be a computer or a smartphone) and then sent directly to the blockchain's block building and validation process. Consensys does not alter the user's signed transaction message, nor could we alter the transaction instructions in any way. Notably, if one were to scrutinize onchain transactions based on the publicly available blockchain transaction record, it is in most circumstances not possible to determine which wallet software the user employed to send a particular transaction.

In short, unhosted wallets and their respective software developers are fundamentally different than customer accounts and their respective financial institutions.

Unhosted wallet developers would not be capable of complying with the Proposed Interpretive Rule

These fundamental differences are critical in no small part because they explain why it is not possible for an unhosted wallet like MetaMask to comply with the obligations the EFTA would place on it. First, Consensys cannot stop a user from composing and signing a transaction message using MetaMask and sending it to the blockchain for processing. Nor are we able to monitor potential transactions that users are compiling but have yet to send, or pausing the blockchain's processing of a signed transaction. Further, once a MetaMask user's transaction has been added to the chain, Consensys has no ability to reverse it.

Second, with regard to charge backs or disputed transactions, there is no method through which Conensys could execute these functions. Consensys has no ability to derive reliable information about a particular transaction to know whether a charge back or a dispute would be legitimate, but more than that, such capability would require each and every MetaMask user to hand over substantial PII to Consensys. Given that Consensys has no other need for such PII given that MetaMask is simply a new form of web browser plus password protector, we do not collect that information currently nor would be capable of doing so without completely changing our business from an application distribution model to an account-based model. To say that such a change would be burdensome to Consensys, let alone any small software developer out there working on a new unhosted wallet app, is a remarkable understatement.

Third, MetaMask is open source software which is accessible not only via app stores but also through Github.[4] Anyone can download the software package and deploy the application's source code up to 10,000 installs, at which time they would need to seek a commercial licensing agreement from Consensys. This, of course, begs the question of whether a third party that is deploying the open source MetaMask software would also be obligated to comply with the EFTA? Or would Consensys be required

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[4] *See* https://github.com/metamask (last visited March 20, 2025).

to ensure those third parties were complying with the EFTA? That unhosted wallet software is generally offered for free and as open source software is a cornerstone of the blockchain industry, and the EFTA would threaten to change that permanently. The Proposed Interpretive Rule thus raises troubling questions that strike at the heart of the development and use of open source blockchain software.

Lastly, the Proposed Interpretive Rule would present difficult questions about the jurisdictional scope of Consensys's potential obligations under the EFTA given that a huge number of MetaMask users are not U.S. persons. Must Consensys, because it is incorporated in Delaware and headquartered in Texas, be required to comply with the EFTA for all MetaMask users regardless of where on the globe they may reside? If the answer to that question is no, then Consensys's burden is not necessarily any easier. That is because our users travel and relocate often, sometimes in and out of the U.S., but more troublesome is that we do not collect data that reliably tells us which users are U.S. based and which are not. To the extent we could comply with the EFTA's requirements, which we cannot for the reasons above (among others), we would have no practical means of knowing which transactions the EFTA applied to.

Proceeding through an interpretive rule would not withstand judicial scrutiny

If an agency is to create new legal obligations or change existing law, it cannot do so through an interpretive rule. But the Proposed Interpretive Rule very much seeks to impose entirely new legal obligations on software developers like Consensys and would fundamentally realign the legal implications of developing or using blockchain technology. It would also have the impact of prejudicing the rights of users, for it would force users to cede meaningful control over their own assets, not to mention their private data. Recategorization of the nature this Proposed Interpretive Rule seeks to engage in would dramatically change how all U.S. persons would participate in peer-to-peer blockchain transactions. It has no precedent in either regulation or statute, and its prejudice to both developers and users is plain.

At the very least, notice and comment rulemaking would be a more defensible procedural path to take than an interpretive rule. It's only proper that a consumer protection agency give the U.S. public the utmost procedural safeguards before pushing forth a new rule that would result in a seismic shift in how a large and growing industry functions. The feedback on scope and, as important, both costs and benefits would certainly inform the agency's view on the proposal.

But formal agency rulemaking along the substantive lines proposed would likely also be procedurally deficient. The new interpretation effectively redesignates certain software applications as financial institutions, and that is a policy choice that plainly sits within the purview of Congress. If challenged, the Proposed Interpretive Rule would be among the most attractive grounds yet on which to strengthen the growing body of law around the Major Questions Doctrine.

Recommendation

Consensys respectfully recommends that the CFPB remove the Proposed Interpretive Rule from the regulatory agenda or, in the alternative, expressly disclaim that unhosted wallet software or any other blockchain technology falls within the scope of any final rule.

We appreciate the CFPB's engagement with the public on this rule and your consideration of the position we have taken in this letter and the positions espoused in the previously mentioned letter submitted by the

Blockchain Association and the DeFi Education Fund. We would be pleased to discuss these concerns and potential remedies with you if you have any questions.

Respectfully submitted,

CONSENSYS SOFTWARE INC.

by:

William C. Hughes