March 27, 2024

Testimony of Kristina Howard
on Behalf of Dapper Labs and Sorare

Pennsylvania House Commerce Committee
Informational Meeting on HB 2081 (Waxman)

Chair Conklin and Emrick, members of the House Commerce Committee and staff,

Thank you for the opportunity to testify today. I am Kristina Howard, here for Dapper Labs and Sorare, two leading NFT companies. Combined, Dapper and Sorare partner with the NFL, NBA, Major League Baseball, Major League Soccer, players' associations, Disney, and other entertainment brands to issue and sell NFTs.

As you may know, NFT stands for nonfungible token, which is shorthand for "unique digital asset." Dapper and Sorare sell digital basketball, baseball, soccer, and football cards, unique sports videos, and other modern-day digital versions of the collectibles that you can buy at flea markets or on eBay and Etsy.

The special value of NFTs is the verifiable authenticity and uniqueness – or non-fungibility – of the underlying digital asset. For instance, in the 90s, Eagles and Steelers fans could buy a pack of football cards with a stick of gum and hope to find a Reggie White or Jerome Bettis card inside – and everyone was trying to get the exact same card. But today, with NFTs, we can each own a unique digital version of a football or baseball card. NFT technology guarantees each card's authenticity, as the blockchain records every time that card is viewed, traded, or sold.

A few years ago, excited tech industry investors spoke of NFTs' powerful blockchain technology and basked in the aura of crypto. Anything associated with Web3 and residing on the blockchain was marketed as "crypto" because it was cool. Nowadays, however, a more straightforward narrative has emerged that distinguishes clearly which digital assets are financial from those that are not - like sports and Disney NFTs.

Drawing an analogy to the physical world, NFTs and blockchain are simply technologies like pipes and plumbing. Pipes can transport gasoline, water, beer, or chemicals and are regulated differently based on their contents and use. Similarly, digital assets underlying NFTs can be sports, music, health records, stock certificates, or currency. And they should be regulated based on their specific use – not all bundled together because they are all NFTs.

If NFT technology is used to produce or distribute digital securities, payments, investments, or other financial services, then those uses should be regulated like securities. But when NFT technology produces and distributes digital consumer assets like a sports card, Barbie doll, or Marvel action figure, the Department of Banking and Securities should have nothing to do with it. Those NFTs should be regulated like all other digital consumer products.

Dapper and Sorare have two specific concerns about House Bill 2081:

1. The bill's definition of "virtual currency lender" is too broad. On page 2, Line 25, "virtual currency lender" is defined as "a person that is regularly engaged in the lending of virtual currency, digital assets, or digital consumer assets." This unequivocally captures Barbie,

Jerome Bettis, concert ticket, and college diploma NFTs that clearly are not financial products or services. These consumer product NFTs are already subject to consumer protection laws covering unfair and deceptive practices, fraud, and other civil and criminal laws. There is no reason they should be covered by financial services laws.

2. On page 2, Line 11, “digital consumer asset” is defined as “a digital asset that is *used or bought* primarily for consumptive, personal or household purposes.” This definition would define the seller’s responsibility by how the buyer uses or intends to use the asset. We are unaware of any other regulated consumer market like this. I may sell you a house, and you will be taxed differently if you choose to live in it or rent it, but that's between you - the buyer - and the government. You might also choose to buy a mint-condition Mike Schmidt or Roberto Clemente rookie card to enjoy and keep forever or as an investment. But the seller is just selling a baseball card - a product - even if you buy it as an investment.

Dapper and Sorare respectfully request that the bill be amended to clarify that only virtual currency and digital financial assets are subject to Department regulation. We believe current law states this clearly, but if the Committee thinks new banking and securities laws are needed, we urge that they apply only to financial products and services and not to digital baseball cards and Barbies. We also request that the bill’s definition of “digital consumer asset” be amended to eliminate any connection between the buyer’s purchase intent, the product’s classification (as securities or non-securities), and the seller’s obligation/liability. We’re happy to provide draft amendment language if that would be helpful.

Thank you, and I’m happy to answer questions.

Examples of Digital Consumer Assets (NFTs)