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California Governor Signs Two New Bills That Will Spur More Blockchain and Cryptocurrency Innovation

On Sept. 28, 2018, California Gov. Jerry Brown signed into law **Senate Bill ("SB") 838** and **Assembly Bill ("AB") 2658**, which together will spur more innovation in and adoption of blockchain and cryptocurrency technologies.

More specifically, SB 838 authorizes certain corporations to maintain corporate records by means of blockchain technology:

> In the case of a corporation that does not have outstanding securities listed on the New York Stock Exchange, the NYSE Amex, the NASDAQ Global Market, or the NASDAQ Capital Market, a provision authorizing records administered by or on behalf of the corporation in which **the names of all of the corporation's stockholders of record**, the address and number of shares registered in the name of each of those stockholders, and **all issuances** and **transfers** of stock of the corporation to be **recorded and kept on or by means of blockchain technology.**[1]

The law imposes certain conditions in order for a corporation to move its records to a blockchain platform, including that the encrypted information can be decrypted and converted into a clearly readable format within a reasonable period of time, and that the records can be used to prepare the list of shareholders, to record information required to be included on stock certificates, and to record required transfers of stock.[2]

Even if California corporations are not ready to convert their shareholder lists and other corporate records to blockchain, the law provides an important signal to the blockchain industry that California is open to innovation.

In conjunction with SB 838, AB 2658 will encourage wider adoption of blockchain technology, which underlies many cryptocurrency products. More specifically, AB 2658 adopts a common definition of "blockchain" and establishes a working group to study the uses, benefits, and risks of blockchain technology.[3]

Notably, earlier versions of the bill would have amended the Uniform Electronic Transaction Act by defining "electronic record" and "electronic signature" to include contracts using blockchain technology or smart contract technology. After proponents disputed a common definition of "smart contracts," the bill proponents amended the statute and proposed establishing a working group to study the underlying technology.

Viewed together, these two bills take a big step forward in adopting a common platform for defining the technology underlying cryptocurrency transactions. Both SB 838 and AB 2658 define "blockchain" as a "mathematically secured, chronological, and decentralized consensus ledger or database." [4] This definition generally fits the industry's definition, but most notably makes no mention of information being publicly available, which many consider to be a hallmark of blockchain technology, nor that the information be validated by the use of cryptography (even though an earlier version of AB 2658 included this language).[5]

There are efforts on the federal level to harmonize the definition of "blockchain" and to continue to study potential risks and benefits of using blockchain technology. In that regard, Congress recently introduced the Blockchain

Promotion Act of 2018, which if enacted, would establish a bipartisan committee to create a common definition of blockchain and study its risks and benefits.

As policymakers continue to debate the potential uses of blockchain and cryptocurrency transactions, California's latest two laws provide an important benchmark for other policymakers across the country.

Rosanna L. Carvacho
Shareholder
rcarvacho@bhfs.com
916.594.9714

Jonathan C. Sandler
Shareholder
jsandler@bhfs.com
310.564.8672

Emily R. Garnett
Associate
egarnett@bhfs.com
303.223.1171

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[1] Adopted under Section 204(a)(12)(A) of the California Corporations Code.

[2] *Id.*

[3] Adopted under Section 11546.9 of the California Government Code.

[4] Id. at 204(a)(12)(B).

[5] See early drafts of AB 2658, available at: **https://legiscan.com/CA/text/AB2658/id/1793516.**

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