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Via Electronic Submission

Regulations@DFPI.CA.Gov
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Department of Financial Protection and Innovation
2101 Arena Boulevard
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Re: Invitation for Comments on Proposed Rulemaking Under the Money Transmission Act / Digital Financial Assets Law (PRO-02-23)

Payward, Inc., d/b/a/ Kraken ("Kraken") welcomes the opportunity to submit a response to the State of California Department of Financial Protection and Innovation's ("DFPI") Notice of Proposed Rulemaking relating to the implementation of the Digital Financial Assets Law ("DFAL") and the Money Transmission Act ("MTA").[1]

Founded in San Francisco in 2011, Kraken is one of the world's oldest and largest digital asset trading platforms.

Please find our comments below. We appreciate the opportunity to provide feedback on these important regulations and look forward to working with the DFPI as it implements the DFAL.

I. License Application Clarification

DFPI requires a pre-filing meeting in the process of submitting an application for a money transmitter license. The proposed DFAL regulations do not explicitly state whether a pre-filing meeting is similarly required for the DFAL application. To the extent specific meetings will be required, it would be helpful to detail such requirements in the regulations.

II. Requirement for a Completed Application

Under DFAL, a transitional period is contemplated by allowing a person to engage in digital financial asset business activity on or after July 1, 2026, provided that "the person submits an application on or before July 1, 2026, and is awaiting approval or denial of that application."[2]

[1] Notice of Proposed Rulemaking, Department of Financial Protection and Innovation, March 27, 2025, pursuant to the Digital Financial Assets Law (Cal. Fin. Code § 3200 et seq.), available at https://dfpi.ca.gov/wp-content/uploads/2025/04/NOPA-March-27-Rev.pdf.
[2] Cal. Fin. Code § 3201(b) (2023).

However, Section 2050 of the proposed regulations interprets this statutory language to mean that an applicant must have submitted a "completed application" as defined in Financial Code section 3203(g) to benefit from the transitional provision.

This interpretation is inconsistent with the plain language of DFAL. The statute simply requires that a person submit "an application" and be "awaiting approval or denial" to continue operations during the transitional period. Nowhere does the statute impose a requirement that the application be "complete" under the specific definition set forth in section 3203(g). The California Legislature created and defined the term "completed application" elsewhere in the law—but chose not to include it in this context.

In addition to being inconsistent with legislative intent, the proposed rule introduces unnecessary ambiguity and administrative uncertainty into the application process. Specifically, applicants will have no clear means of determining whether they are eligible to operate during the transitional period. An applicant that submits a timely application under DFAL may reasonably believe that it is "awaiting approval or denial," and therefore in compliance with the law. However, under DFPI's proposed interpretation, the agency reserves discretion to determine whether the application is "complete"—a subjective determination that may involve back-and-forth communications, requests for clarification, or supplemental submissions. While it is appropriate for DFPI to conduct such a review in the normal course of evaluating an application, nothing in DFAL suggests that this process should condition an applicant's ability to operate during the transitional period.

Additionally, the proposed rule presents timing concerns. If DFPI does not finalize the application requirements before early 2026, applicants may have limited time to assemble all documentation and respond to any DFPI follow-up requests to meet the standard of a "completed application" by July 1, 2026. This creates a high risk that applicants acting in good faith to comply with the law could be unfairly excluded from the transitional safe harbor due to timing alone.

To avoid this uncertainty and remain consistent with the statutory framework, Kraken urges DFPI to strike the "completed application" requirement from Section 2050 of the proposed rules. In the alternative, if DFPI insists on retaining this concept, the agency should at minimum establish clear and timely procedures for (i) notifying applicants when their application has not yet been deemed complete and (ii) allowing sufficient time between finalization of requirements and the July 1, 2026 deadline to reasonably meet the "completed application" standard. Absent such measures, the transitional provision risks becoming an unworkable trap for well-intentioned applicants acting in good faith reliance on the statute.

III. Renewed Comments on Covered Exchange Certification

The Covered Exchange Certification ("CEC") currently requires each applicant to have "identified the likelihood that the digital financial asset would be deemed a security by federal or California regulators." Neither federal or California regulators have provided clarity around the definition of a security for this purpose, and the rules may vary over time, without specific notice or advance notice, as new administrations take office and commissioners are replaced. In this environment, securities opinions are inherently snapshots in time based on the then-current understanding of how regulations are applied, rather than having any assured validity for an extended period of time.

Kraken believes that DFPI's requirements should be commercially reasonable so that licensees operating in this changing environment can comfortably make the certifications set forth in the CEC. Because new standards or guidance may be issued by the SEC at any time, it is more commercially reasonable to have the attestation state that the licensee has "identified the likelihood that the digital financial asset would be deemed a security by federal or California regulators" ***based on a reasonable application of the standards in effect at the time of attestation.*** That is, this determination is made in good faith at a point in time. The licensee will also implement a plan (as further required by the attestation) for periodic review of the digital asset to assess whether the outcome of its determination has changed.