May 19, 2025

Department of Financial Protection and Innovation
Attn: Diana Pha, Regulation Coordinator, Legal Division
Email: regulations@dfpi.ca.gov
651 Bannon Street, Ste. 300
Sacramento, CA 95811

with copy to

Commissioner Khalil Mohseni
2101 Arena Boulevard
Sacramento, CA 95834

Re: Comments on Proposed Amendments to California Code of Regulations

Dear Regulation Coordinator Diana Pha and Commissioner Khalil Mohseni:

Okcoin USA, Inc., ("OKX") thanks you for the opportunity to comment on the Department of Financial Protection and Innovation's (the "Department") proposed amendments to the California Code of Regulations as set forth in PRO 02-23, including applicants obligatory use of the NMLS Company Form (MU1), NMLS Individual Form (MU2), and DFPI Form 2 (Personal Financial Statement) to implement the provisions of the *Digital Financial Assets Law* ("DFAL") efficiently and effectively as possible.

OKX is a cryptocurrency exchange that is a licensed money transmitter in 40 jurisdictions across the United States. OKX offers a regulated platform for trading a wide range of digital assets, providing our users with advanced trading tools, deep liquidity, and integration with major banking networks to support both retail and institutional clients.

We appreciate the Department's ongoing efforts to modernize regulatory requirements, promote consistency with national licensing standards, and ensure transparency in the oversight of licensed financial service providers. We agree that a well-regulated digital asset sector encourages innovation by removing legal ambiguities and harmonizing consumer protection with business development. We respectfully submit the following comments for your consideration.

Defining Control for Digital Asset Innovation

To ensure regulatory clarity, foster industry growth, and address the unique aspects of digital asset businesses, we respectively suggest that Cal. Fin. Code § 2045(b) be amended to define "control" in a manner that aligns with federal guidance, enforcement practices, and statutory language from other state banking regulators. The Department recognizes that digital asset

business regulation originates from traditional money transmission frameworks, but that DFAL seeks to adapt these regulations to fit the digital asset industry's technological uniqueness.[1]

Given the currently proposed definition of "control" under Cal. Fin. Code § 2045(b), we recommend specifying which transmissions qualify as regulated digital asset business activity. We propose that "control" over digital assets should specifically refer to those who retain control, including possession of private keys, while excluding consumer-directed transmissions through automated smart contracts. Transmissions directed by individual consumers via decentralized smart contracts should not be classified as regulated business activity. This approach would align with the technical aspects of the digital asset industry and is consistent with prevailing case law, state treatment, and federal guidance as described further below.

"Control" defined under Cal. Fin. Code § 2045(b), as drafted pursuant to PRO 02-23 *Text of Proposed Regulations*, aligns with the NMLS Policy Guidebook and traditional money transmission licensing regimes, but it does not account for the unique concepts of "control" as they relate to the transmission of digital assets.[2] Specifically, the ability to unilaterally execute or indefinitely prevent a digital asset transaction is demonstrated through ownership or access to the private keys necessary for transmission requests.

The core components of federal money transmission encompass "***control***," providing "***services for profit***," and conducting such services "***on behalf of the public***."[3] U.S. Courts have reasoned that within the scope of digital assets, "[u]nhosted wallets allow users to keep a cryptocurrency balance outside of an exchange, affording the owner ***complete control*** over their private key (unlike hosted wallets, which sit on a crypto asset trading platform)."[4]

FinCEN's *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies* guidance (the "2019 Guidance") identifies three digital wallet offerings: (i) "hosted wallets," (ii) "unhosted wallets," and (iii) "un-hosted multiple-signature wallet." FinCEN defines a "hosted wallet" as "account-based money transmitters that receive, store, and transmit CVCs on behalf of their accountholders."[5] FinCEN defines an "unhosted wallet" as "software hosted on a person's computer, phone, or other device that allow the person to store and conduct transactions in CVC."[6] The 2019 Guidance continues that self-hosted wallet operators must retain "total independent control" over the funds for the wallet to be considered "unhosted" and, therefore, outside the scope of regulation.[7]

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[1] *See* PRO 02-23, *Notice of Proposed Action* *3 (Effective January 1, 2014, the California Legislature enacted AB 2209, which included numerous substantive and technical amendments to the Money Transmission Act (MTA) (Financial Code section 2000 et seq.)").

[2] *See, e.g., Nationwide Multistate Licensing System, NMLS Policy Guidebook (May 15, 2025)* at * 43; Conference of State Bank Supervisors, *Model Money Transmission Modernization Act* § 102.

[3] *See United States v. Singh*, 995 F.3d 1069 (9th Cir. 2021) (emphasis added).

[4] *See SEC v. MCC Int'l Corp*., 2023 WL 7411553 *2 (S.D. Fla. Oct. 2, 2023) (emphasis added); s*ee also Bureau of Consumer Fin. Prot. v. Consumer Advoc. Ctr*., 2022 WL 19875992, Fn. 1 (C.D. Cal. Oct. 7, 2022) ("only the person with access to the unhosted wallet can control, and confirm control of, the cryptocurrency held at the address(es) controlled through the unhosted wallet.").

[5] *See* Financial Crimes Enforcement Network, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies*, FIN-2019-G001 at *15 (May 9, 2019).

[6] *Id*. at 16.

[7] *Id*.

On April 6, 2023, the U.S. Department of the Treasury (the "Treasury") published the *Illicit Finance Risk Assessment of Decentralized Finance* (the "DeFi Risk Assessment").[8] The Treasury highlighted that while "DeFi services purport to run without support of a central company, group, or person," they frequently have a "controlling organization that provides a measure of centralized administration or governance," and the DeFi Risk Assessment identifies factors such as "management functions," unilateral "fixing [of] problems with the code," and "altering the functionality of the smart contracts," with a "concentration of governance tokens and voting" demonstrating control over the decentralized application).[9]

On March 21, 2025, the Treasury's Office of Foreign Assets Control ("OFAC") removed Tornado Cash from its Specifically Designated Nationals list, citing a review of "novel legal and policy issues" related to financial sanctions in evolving technologies and legal environments.[10] This action followed the Fifth Circuit Court of Appeals' November 2024 ruling in *Van Loon v. Department of the Treasury*, which determined that Tornado Cash's immutable smart contracts do not qualify as "property" under the International Emergency Economic Powers Act ("IEEPA"), thereby exceeding OFAC's statutory authority, reasoning that "property" under IEEPA must be something capable of being owned or controlled, and "the pool smart contracts became self-executing and could no longer be altered, removed, or controlled."[11]

Louisiana's Virtual Currency Businesses Act ("VCBA"), §1382(28)(a) defines virtual currency business activity in relevant part as "[e]xchanging, transferring, or storing virtual currency or engaging in virtual currency administration, whether directly or through an agreement with a virtual currency control services vendor."[12] Under the VCBA, "transfer" is broadly defined as "to ***assume control*** of virtual currency from, or on behalf of, a resident and do any of the following: . . . Relinquish control of virtual currency to another person."[13] "Control" is explicitly defined as the "power to execute unilaterally or prevent indefinitely a virtual currency transaction."[14]

Maine, Minnesota, North Dakota, and Vermont have all amended their money transmission statutes to clarify that entities engaging in "virtual currency business" activities require licensure under the state's *Money Services Act*.[15] The amendments expanded the definition of "money transmission" under each of the afforested state's money transmission regulatory regimes, to include "virtual currency" and established that "control" of virtual currency" on behalf of others could trigger licensing obligations.[16] Drawing from the Conference of State Bank Supervisors' *Money Transmission Modernization Act*, optional Article XIII language, each of Maine, Minnesota, North Dakota, and Vermont's statutory language now defines one having "control of virtual currency" "when used in reference to a transaction or relationship involving virtual

[8] *See* U.S. Department of the Treasury, *Illicit Finance Risk Assessment of Decentralized Finance* (Apr. 6, 2023).
[9] *Id.* at 12-13.
[10] *See* U.S. Department of the Treasury, Press Release, *Tornado Cash Delisting* (Mar. 21, 2025).
[11] *See Van Loon v. Dep't of the Treasury*, 122 F.4th 549, 557 (5th Cir. 2024).
[12] *See* La. Stat. Ann. § 6:1382(28).
[13] *See* La. Stat. Ann. § 6:1382(23).
[14] *See* La. Stat. Ann. § 6:1382(6).
[15] *See* 8 V.S.A. §§ 2500 et seq.
[16] *See* 8 V.S.A.§ 2503(27).

currency, means the power to execute unilaterally or prevent indefinitely a virtual currency transaction."[17]

Alignment with NMLS MU1 and MU2 Form Standards

We commend the Department for its efforts to align the MU1 and MU2 forms with current NMLS uniform requirements. Standardization will reduce duplicative reporting obligations for multi-state licensees and enhance operational efficiency. We, however, request clarification on any California-specific fields or attachments that will remain mandatory following adoption of the amended forms. A detailed comparison between the prior and revised versions would aid compliance teams in adjusting internal workflows.

DFPI Form 2 – Personal Financial Statement

The proposed revisions to DFPI Form 2 represent an important step toward ensuring accurate and comprehensive financial disclosures by control persons. Nonetheless, we offer the following recommendations:

- **Clarify Valuation Requirements**: The form should include guidance on how assets (particularly non-liquid or closely held business interests) should be valued (*e.g.*, GAAP, fair market value). Without clear standards, filers may take inconsistent approaches, reducing comparability and reliability.

- **Confidentiality Protections**: Given the sensitive nature of personal financial disclosures, we urge the Department to explicitly confirm in the regulatory text or guidance that the information submitted in Form 2 will be treated as confidential and not subject to public disclosure under the *California Public Records Act* (Cal. Gov't Code § 7920.000 *et seq*.), except as required by applicable law.

Implementation Timeline and Training

To ensure a smooth transition, we request that the Department provide a clear effective date for the new forms and rules and to specify a transition period during which prior versions will still be accepted.

Conclusion

We support the Department's efforts to modernize and streamline regulatory filings and encourage continued collaboration with industry stakeholders to ensure that the final regulations promote clarity, compliance, and efficiency. We believe the suggestions herein offer reasonable alternatives that more effectively fulfill DFAL's purpose while being less burdensome to those affected by the proposed action. We welcome the opportunity to engage further on these important updates.

[17] *See* Me. Rev. Stat. tit. 32, § 6100-OO to UU; Minn. Stat. §§ 53B.69 to 75; N.D. Cent. Code §§ 13-09.1-46 to 49; and Vt. Stat. Ann. tit. 8, § 2571 to 2577, *respectively*.

Please do not hesitate to contact us if you have any questions or would like to discuss these comments in more detail.

Respectfully submitted,

Olivia C. White
Associate General Counsel, Global Regulatory
Okcoin Inc, USA.
olivia.white@okx.com