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Khalil Mohseni
Commissioner
Department of Financial Protection and Innovation
651 Bannon Street, Ste. 300
Sacramento, CA 95811

Transmitted by email: regulations@dfpi.ca.gov

Dear Commissioner Mohseni,

PayPal appreciates the opportunity to provide feedback on the [proposed regulations](#) on the California's Department of Financial Protection and Innovation Digital Financial Asset Law. Outreach with industry is critical as the Department develops a framework for regulating digital asset technologies.

Twenty-five years ago, PayPal embarked on a journey to digitize payments and take them from offline to online. Today, PayPal is one of the leading payments service providers in the U.S. and around the world.

We continue to innovate by enabling payments from online to onchain. We carefully entered the crypto sector five years ago, by enabling our customers to buy, sell, and hold four and then six types of commonly used crypto currencies. Our customers can also use crypto as a payment method with millions of merchants. In 2023, we launched PayPal USD or PYUSD – a fully backed, regulated stablecoin issued by Paxos, and developed for commerce and payments.

Our objective in engaging in the digital asset space and, ultimately, in bringing PYUSD to market is twofold: leverage the latest innovations to provide a faster, cheaper and stable payment medium; and ensure it has utility for the users in commerce and payments. With PYUSD, consumers are able to conduct faster and cheaper transactions and settle those transactions quickly. Businesses benefit from the same advantages and can use stablecoins to enable cross border payments, open new markets, and manage their own treasury more effectively.

At every stage of our cryptocurrency journey, beginning with our buy, hold, and sell product, continuing through enabling crypto transfers and into launching a stablecoin, we have been deliberate and methodical in our approach, building trust with customers, regulators, and law enforcement at each step – just as PayPal has done with each of the innovative services we've launched as a leading payments company.

All of this was done with the appropriate authorizations from our regulators. In the United States, we looked to the most rigorous regulator in this space, the NY State Department of Financial Services (NYDFS), who has been overseeing the industry since 2015. We have a bitlicense and a money transmitter license with NYDFS, as well as a limited purpose trust charter. Our partner that serves as issuer of the stablecoin, Paxos Trust Company, LLC, is chartered with NYDFS as a limited purpose trust company. In California, we are regulated under the Money Transmission Act and California Financial Law.

We appreciate the Department for working to provide the regular and predictable market policy that is necessary for the crypto industry to grow and thrive in California, and where possible, harmonizing with other states and any federal regime. Please see our specific comments on the proposed regulations, below.

Thank you for your consideration of these requests. Please feel free to reach out to us with any questions.

Digital Financial Assets Law ¹ and Proposed Regulations (PRO 02-23) ²	Proposed Change to Regulations
<p><u>Statute</u> “Except as provided for under paragraph (2), a covered exchange...shall certify on a form provided by the department that the covered exchange has done the following: (A) Identified the likelihood that the digital financial asset would be deemed a security by federal or California regulators...(2) Certification by a covered exchange shall not be required for any digital financial asset approved for listing on or before January 1, 2023, by the New York Department of Financial Services pursuant to Part 200 of Title 23 of the New York Code of Rules and Regulations.” Cal. Fin. Code § 3505.</p> <p><u>Proposed Regulations</u> <u>Except as provided at Section 3505(a)(2) of the California Financial Code.</u> If the applicant is a covered exchange that is listing or offering a digital financial asset that it can exchange on behalf of a resident, it must file a certification through NMLS stating, among other things, that it has “[i]dentified the likelihood that the digital financial asset would be deemed a security by federal or California regulators.” Proposed § 2048(a)(3).</p>	<p>The Digital Financial Assets Law (Act) requires certification regarding the potential treatment of a digital financial asset as a “security” in certain circumstances. The regulations implement this requirement but omit an important statutory exemption. We request the inclusion in the regulations of the safe harbor that appears in the statute for existing NYDFS green-listed assets.</p>

¹ Cal. Fin. Code § 3101 et. seq.

² <https://dfpi.ca.gov/wp-content/uploads/2024/10/PRO-02-23-Draft-Proposed-Rules.pdf>.

Digital Financial Assets Law ¹ and Proposed Regulations (PRO 02-23) ²	Proposed Change to Regulations
<p><u>Statute</u> “A licensee shall file with the department a report of... A material change in information in the application for a license under this division or the most recent annual report of the licensee under this division.” Cal. Fin. Code § 3307 [emphasis added].</p> <p><u>Proposed Regulations</u> “A licensee shall, upon any material change in the information contained in its application for a license, file the changed information with the Commissioner through NMLS.” Proposed § 2057 [emphasis added].</p>	<p>We request an amendment of the regulations to include the materiality standard that appears in the statute.</p>
<p><u>Statute</u> “Before engaging in digital financial asset business activity with a resident, a covered person shall disclose...all of the following...” Cal. Fin. Code § 3501(b). “A disclosure required by this section shall be made separately from any other information provided by the covered person.” Cal. Fin. Code § 3501(a). “Policies and procedures adopted under this section shall be disclosed separately from other disclosures made available to a resident.” Cal. Fin. Code § 3701(k).</p>	<p>We request clarification in the regulations that a one-time disclosure at account opening is sufficient. This interpretation is consistent with the statutory text and would protect consumers while not impeding digital financial asset transactions. We also request that disclosures are no longer required to be made separately from other information, as this requirement is cumbersome and does not promote consumer protection.</p>
<p><u>Statute</u> “[A] licensee shall maintain at all times capital and liquidity in an amount and form as the department determines is sufficient to ensure the financial integrity of the licensee and its ongoing operations based on an assessment of the specific risks applicable to the license.” Cal. Fin. Code § 3207.</p>	<p>The Department should publish a presumptive standard for what constitutes adequate capital in order to provide greater certainty to licensees.</p>
<p><u>Statute</u> 3505. (a) (1) Except as provided for under paragraph (2), a covered exchange, prior to listing or offering a digital financial asset that the covered exchange can exchange on behalf of a resident, shall certify</p>	<p>Given the evolving nature of this issue, we suggest requiring an assessment of any legal risks related to</p>

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<p>on a form provided by the department that the covered exchange has done the following:</p> <p>(A) Identified and assessed the likelihood that the digital financial asset would be deemed a security by federal or California regulators legal risk associated with the digital financial asset.</p> <p><u>Proposed Regulations</u></p> <p>“The undersigned hereby certifies that the applicant/licensee named above has done the following with respect to each and every digital financial asset listed above:</p> <p>1. Identified and assessed the likelihood that the digital financial asset would be deemed a security by federal or California regulators legal risk associated with the digital financial asset.”</p>	<p>the digital financial asset. This standard is consistent with the legal review required by the NYDFS.</p>