May 8, 2023

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Submitted via e-mail to *rule-comments@sec.gov*

Re: File No. S7-04-23

Dear Ms. Countryman:

Payward Financial, Inc., a Wyoming special purpose depository institution ("**Kraken Bank**"), a subsidiary of Payward, Inc. d/b/a Kraken ("**Kraken**"), is pleased to submit this letter in response to Investment Advisers Act Release No. 6240 (February 15, 2023), which proposes the redesignation of rule 206(4)-2 to new rule 223-1 (the "**Proposed Rule**") under the Investment Advisers Act of 1940 (the "**Advisers Act**"). In this letter we address the Proposed Rule from the perspective of a digital asset custodian.

Executive Summary

Kraken Bank welcomes the efforts of the Securities and Exchange Commission (the "**SEC**") to establish rules that govern custody of digital assets in a transparent and constructive manner. For more than a hundred years, Congress has supported a robust and competitive dual banking system because of its advantages to the U.S. economy and consumers. While the Proposed Rule reflects thoughtful consideration of issues unique to digital assets, it represents an unprecedented departure from settled custody law and undermines the long-standing policy of competitive equality in the dual banking system. The Proposed Rule does not provide for deference to state standards. Instead, it imposes an SEC federal regulatory scheme without regard to well-established federal and state bank custody law or related regulatory and supervisory principles. In addition, the Proposed Rule contains requirements which are likely to stifle adoption of digital assets and limit consumer choice. Kraken Bank recommends that the SEC pare back the elements of the Proposed Rule which disregard established principles of federal and state bank custody law and allow for exceptions in some circumstances to allow for a diversity of financial institutions that can serve as digital asset custodians as well as to provide a balanced regulatory approach that does not stifle progress and innovation with respect to digital assets.

Kraken's Story

Kraken, now one of the largest digital asset platforms in the world, was created to provide a safe, professional, and easy way to access Bitcoin and other digital assets. Before Kraken existed, Kraken's co-founder, Jesse Powell, first owned a digital collectibles marketplace which accepted Bitcoin in exchange for digital playing cards and video game items. In 2011, a colleague of Mr. Powell's reached out asking for his help managing the fallout of the first Mt. Gox hack. Mt. Gox was the largest Bitcoin exchange at the time and, at its peak, handled more than 70% of all Bitcoin transactions worldwide. Mr. Powell flew to Tokyo, where Mt. Gox was based, and served as customer support for the beleaguered exchange, writing a press release about the hack, answering client questions, and working to help recover the Mt. Gox website. Mr. Powell learned from that experience that the best way to custody digital assets is with your own cryptographic keys, but that the second best way (for those not in a position to "self-custody") is to keep them with a centralized exchange that prioritizes security of client assets above everything else. He founded Kraken in 2011 to be that exchange.

Since 2011, we have grown into a diversified, global crypto market infrastructure business serving over 10 million customers around the world. Our mission is to expand the adoption of cryptocurrency by offering the most secure and transparent platform, deepest liquidity, and the best user experience. Kraken is committed to supporting policy makers here in the U.S. and around the world to implement effective domestic rules and a coherent international regulatory framework for digital asset markets.

Kraken has earned numerous accolades that recognize its "security above everything" ethos. This uncompromising focus on security helped the exchange earn a reputation as a trusted and secure digital asset exchange, as recognized by CER.live and Forbes, as well as Kraken's CSO50 award and ISO 27001 certification.

Kraken Bank obtained a special purpose depository institution ("**SPDI**") bank charter from the state of Wyoming in September 2020. Our experience with securing digital assets on behalf of clients and our work with the Wyoming Division of Banking inform our belief that state-regulated banks are well positioned to address the SEC's client protection concerns with respect to digital assets. Given Kraken's founding story and its commitment to digital asset adoption, the feedback in this letter focuses on the potential effects of the proposed changes on the adoption of digital assets.

I. Digital Assets Provide Value to the World and Registered Investment Advisers are Important to their Adoption

Digital assets, though they have existed only for the last 14 years, have already begun to change the world for the better. While there are many advantages to digital assets over traditional financial assets and institutions, there are a few that are especially salient in the context of the U.S. financial system:

- ***Transparency***: A public blockchain such as Bitcoin is a type of distributed ledger that records transactions. The adjective “distributed” in the foregoing sentence means that there is no master copy of the blockchain – any participant may maintain a copy of the ledger and all participants have copies that match the other copies.[1] The fact that all participants can see all other participants’ transactions is at the core of a blockchain’s advantages over traditional financial assets: transparency. This transparency ensures that all transactions are publicly, permanently visible; they provide a permanent and irrefutable record of all transactions. Traditional financial assets offer far less accountability. In traditional financial markets, regulation requires reliance on intermediaries for every step of a transaction, and each intermediary keeps records which are not visible to the public. Sometimes their records are not even visible to their clients.

- ***Immutability***: Blockchains bring an unprecedented level of trust and integrity to a financial transaction. Once a transaction joins the blockchain, it stays there as a representation of the ledger up to that point in time. It is much easier to audit a blockchain than a private ledger.

- ***Efficiency***: Transfers of digital assets settle within seconds on a typical blockchain. This stands in significant contrast to transfers of financial assets, which often take days, involving multiple intermediaries and an opaque settlement system.[2]

Institutional investors have recognized the potential of digital assets and look to their registered investment advisers (“**RIA**s”) to support this interest and provide advice on such investments.[3] In order for RIAs to address their clients’ demands and also comply with the law,

[1] *See* Heather Hugers, *Blockchain and the Future of Secured Transactions Law*, 3 Stanford Journal of Blockchain Law. & Policy (2020).

[2] *See e.g., The Digital Asset Revolution: Preparing for the Next Generation of Financial Markets* (https://www.broadridge.com/_assets/pdf/broadridge_the_digital_asset_revolution.pdf) (explaining the transformative power of digital assets).

[3] *See* McKinsey and Company, *McKinsey on Investing*, Dec. 2022, available at https://www.mckinsey.com/~/media/mckinsey/industries/private%20equity%20and%20principal%20investors/our%

RIAs need entities that meet the SEC's definition of qualified custodian ("**Qualified Custodians**") who can provide custody for digital assets. To meet this demand, an emerging class of Qualified Custodians that support digital assets has materialized, which includes Wyoming SPDIs. While other aspects of the custodial industry have existed for decades, the core infrastructure of digital asset custodial offerings is still being put in place. It is vital to this nascent technology that the regulatory framework provides sufficient flexibility so as not to discourage institutional investment.

II. The Proposed Rule impedes the dual banking system, and interferes with the role of bank regulators

Since the National Bank Act of 1863, Congress has recognized the importance of empowering both federal and state banks to provide banking services to Americans.[4] State banks benefit the United States by, among other things, experimenting with new products and services that Congress later enacts into banking laws that apply on a nationwide basis.[5] By mandating exactly how banks perform the custody function,[6] and implying that state banks are not as qualified to do so as national banks, the SEC simultaneously steps into the banking regulators' lane and threatens the dual banking system.

The SEC asked in the Proposed Rule whether state-chartered banking entities providing digital asset custody services offer, and are regulated to provide, the types of protections the SEC believes a Qualified Custodian should provide under the rule. We have two answers: (1) yes, and

20insights/mckinsey%20on%20investing%20issue%208/mckinsey-on-investing-number-8-full-issue.pdf report (describing the opportunity available to wealth managers in light of their clients' strong demand to invest in digital assets).

[4] *See* Robert C. Eager and C.F. Muckenfuss, *Federal Preemption and the Challenge to Maintain Balance in the Dual Banking System*, 8 N.C. Banking Inst. (April 2004) (discussing the history of federal statutes that have established and then reinforced the parity of state and federal banks).

[5] *Ibid.*

[6] Proposed Rule 223-1(a)(1)(ii) sets forth the standard of care that banks, among other Qualified Custodians, must observe, indemnification and insurance requirements, and the manner in which banks and other Qualified Custodians segregate client assets, among other things. This is available on pages 412-413 of *Safeguarding Advisory Client Assets*, Release No. IA-6240, Fed. Reg. No. 2023-03681 (March 9, 2023) (the "**Release**").

(2) it is not the SEC's place to imply that state-chartered entities that otherwise meet the definition of "bank" in the Advisers Act[7] are somehow inferior to federally-chartered entities.[8]

A core tenant of the Proposed Rule is the proposed requirement to keep customer assets, including digital assets, completely separate from proprietary firm assets. This means that customer assets, such as cash and digital assets, must be held in separate accounts that are distinct from the firm's accounts. The Proposed Rule, among other things, (1) expands the current custody rule to include all client "assets" and not only client "funds and securities" thereby extending the segregation requirement to digital assets, and (2) creates extensive new proposed requirements for RIAs and Qualified Custodians (including a requirement that the Qualified Custodian segregate all client assets from its proprietary assets and liabilities). The banking law in states like Wyoming has already addressed these requirements and has gone a step further, by providing a statutory basis for keeping customer assets out of a SPDI's bankruptcy estate.

In establishing the regulations for SPDIs, Wyoming has blazed a trail with the creation of the charter to bridge the gap between digital and fiat currencies under the careful oversight of a state banking regulator. Kraken Bank, a SPDI, is a "bank" under Wyoming law,[9] U.S. federal statutes[10] and certain U.S. state banking laws. SPDIs are held to standards analogous to - and in some circumstances more stringent than - those imposed upon banks throughout the country.

[7] The Advisers Act defines a bank as (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 2(4) of the Home Owners' Loan Act, or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

[8] *See* Commissioner Mark T. Uyeda, *Statement on Proposed Rule Regarding the Safeguarding of Advisory Client Assets* (February 15, 2023) (available at https://www.sec.gov/news/statement/uyeda-statement-custody-021523) ("The [Release] further questions whether state-chartered trust companies providing crypto asset custody services – 'offer, and are regulated to provide, the types of protections [the Commission believes] a qualified custodian should provide under the rule,' as if to suggest that state-regulated banking entities are less trustworthy than federally-chartered ones.")

[9] *See* Wyoming Statute (W.S.) 13-1-101(a)(i) ("'Bank' means any corporation, excluding national banks, having a place of business within [Wyoming] which engages in banking business, and includes a special purpose depository institution.")

[10] *See* 12 U.S.C. § 1813(a) (defining "bank" to include "(1) any national bank, state bank, state-chartered savings bank, or industrial bank"); *see also* 26 U.S. Code § 581 ("bank" means "a bank or trust company incorporated and doing business under the laws of the United States [ ] or of any State, a substantial part of the business which consists of receiving deposits…").

A. The proposed requirements regarding the manner in which a bank holds client assets expropriate the bank regulators' powers

The Proposed Rule requires that "the qualified custodian will clearly identify the client's assets as such, hold them in a custodial account, and will segregate all client assets from the qualified custodian's proprietary assets and liabilities."[11] Requirements about how a bank maintains assets under custody are squarely within the ambit of bank regulators, not the SEC.

Kraken Bank's SPDI charter is specifically designed for bank safekeeping, custody, and administration of customer assets. Pursuant to the Wyoming statute, a bank (including a SPDI such as Kraken Bank) "may serve as a qualified custodian, as specified by the United States securities and exchange commission."[12] In order to serve as a Qualified Custodian, a SPDI is required to comply with a number of accounting and risk mitigation measures outlined in the Wyoming statutes and administrative rules. One important requirement is that a SPDI, as a Qualified Custodian, must "maintain customer digital assets, funds and other securities which are not digital assets: (i) In a separate account for each customer under that customer's name; or (ii) In accounts that contain only customer digital assets, funds and other securities which are not digital assets, under the bank's name as agent or trustee for customer."[13] Wyoming rules further mandate that "assets held by a [SPDI] in a custodial, fiduciary or trust capacity are not part of the institution's general assets and liabilities held in connection with its other business" and shall not be a source of payment to creditors, so long as there is "[a]ppropriate segregation from institution assets [and] appropriate recordkeeping relating to custodial accounts."[14]

By prescribing its own rules about how Qualified Custodians must maintain customer assets, the SEC enters the sphere of bank regulators. If adopted as proposed, the Proposed Rule could undermine the ability of state and federal banking regulators to enforce and make changes to their own regulations regarding bank custody.

B. The proposed indemnification and insurance requirements of the Proposed Rule are unnecessary and would hamper the adoption of digital assets

The Proposed Rule requires RIAs to obtain reasonable assurances from the Qualified Custodian that, among other things, the Qualified Custodian will "indemnify the client (and will have insurance arrangements in place that will adequately protect the client) against the risk of loss of the client's assets maintained with the qualified custodian in the event of the qualified custodian's own negligence, recklessness, or willful misconduct." We believe that the proposed

[11] Proposed Rule 223-1(a)(1)(ii)(D).
[12] W.S. 34-29-104(b); *see also* Wyoming Administrative Rule Ch. 19, Section 4 (Wy. Admin. Rule, Ch. 19).
[13] Wy. Admin. Rule, Ch. 19, Section 4(a).
[14] W.S. 34-29-104(d); Wy. Admin. Rule, Ch. 20, Section 6(p).

indemnification and insurance requirements are arbitrary and unfounded and will hamper the adoption of digital assets.

Prescribing a negligence standard of care in the Proposed Rule, and then tacking on indemnification and insurance requirements tied to this standard, ignores the client protections that already exist as part of a custodian's functional regulatory scheme. SPDIs, for example, are subject to on-site and off-site examination by the Wyoming Division of Banking. The Division of Banking reviews SPDIs' operational risk management practices, including their systems and controls for identifying, measuring, and mitigating risks associated with their activities.

The Wyoming statute requires the following of SPDIs:

- *100% reserves required***.** SPDIs must maintain unencumbered and liquid assets valued at no less than 100% of depository liabilities.[15]

- *Required contingency account and initial surplus fund*. SPDIs are subject to stringent capital and reserve requirements designed to protect bank customers in the event of a downside scenario.

- *Business Continuity Plan***.** Must be implemented to cover, among other things, personnel redundancy, procedures to mitigate operational impacts or transfer operational functions, alternate site locations to mitigate environmental and technical interruptions, and a recovery plan for the restoration of normal operations after interruption.

- *Recovery and Resolution Planning***.** SPDIs are required to submit and obtain approval from the Wyoming Division of Banking for their Recovery and Resolution Plan, which must generally encompass the requirements of a national bank recovery plan and targeted resolution plan, as mandated by the Federal Reserve.

- *Independent Management and Operations*. While a subsidiary of Payward, Inc., Kraken Bank is structured and required to be operated as an independent going concern. This includes a majority independent bank Board of Directors, separate c-suite officers, and others directly employed by Kraken Bank.

[15] This "full reserve" requirement, if it had applied to Silicon Valley Bank and Signature Bank, may have prevented the failure of those banks. *See, e.g.,* James Lee and David Wessel, *What did the Fed do after Silicon Valley Bank and Signature Bank failed?* March 22, 2023, available at https://www.brookings.edu/2023/03/22/what-did-the-fed-do-after-silicon-valley-bank-and-signature-bank-failed/ (explaining that banks that only keep a fraction of customer deposits on reserve may not have enough cash on hand to satisfy withdrawals if all customers withdraw at once, which can lead to a bank run, which can cause a bank to have to sell its assets quickly, at a loss.)

- *Bespoke Regulatory Framework for Digital Asset Custody*. Extensive regulation specifically focused on requirements for digital asset custody, under what is likely the most comprehensive regulatory framework on the subject to date.

- *Operational Risk Management Policies*. These must be clearly documented, audited, and complied with in a manner that addresses all key operational risks.

- *Prudential Regulatory Oversight and Supervision by the Wyoming Division of Banking*. By law, a SPDI must be supervised in the same manner as other state and national banks engaged in deposit-taking, custodial, and fiduciary activities.

This SPDI regulatory framework is designed to achieve the same goal - client protection - as the SEC's proposed indemnification requirement. Furthermore, by requiring that the Qualified Custodian indemnify the client for breaches of this standard, the SEC will discourage new entrants into the custodial space, especially those that specialize in digital assets, where the lack of years of history hampers custodians from knowing how a "negligence" standard will be interpreted. It is hard to know what a court would find the average reasonable custodian to have done in a situation involving a particular smart contract interface if the entire industry is using the interface for the first time. Bank regulators are better positioned to prevent errors in the first place by policing for the performance of reasonable care through their examination procedures and ongoing oversight than the courts, which will only act after an error has occurred.

In a parenthetical, the SEC has added yet another burden to Qualified Custodians, which is the proposed requirement to obtain insurance arrangements that adequately protect the client. The analysis accompanying the Proposed Rule does not address the expected cost of such a requirement. This is not surprising, since the Proposed Rule does not specify the level of insurance required. Are Qualified Custodians to insure the assets under their custody 100% against loss due to negligence? Only 5%? The Proposed Rule is unclear.

Insurance for digital asset custodian negligence does not exist today on any scale. This proposed requirement will likely make it impossible for most Qualified Custodians to provide digital asset custody. If a Qualified Custodian were able to convince an insurance company to design such insurance, it is likely that the cost would be exceedingly high, with one of two results: no Qualified Custodian could afford to provide custody for digital assets or the Qualified Custodians that do take on the cost simply pass it on to their RIA clients, who pass it on to their ultimate clients, significantly increasing the cost of holding digital assets with a Qualified Custodian. Either outcome means that the Proposed Rule will have interfered with the growth of digital asset adoption without justification.

III. The proposed "possession and control" standard is generally workable for digital assets, though exceptions should be permitted in some circumstances

The Proposed Rule requires that a Qualified Custodian maintain possession or control of the RIA's client assets.[16] The Proposed Rule defines "possession and control" as holding assets such that the qualified custodian is required to participate in any change in beneficial ownership of the assets, the Qualified Custodian's participation would effectuate the transaction involved in the change in beneficial ownership, and the Qualified Custodian's involvement is a condition precedent to the change in beneficial ownership (the "**Change in Beneficial Ownership Standard**"). This is generally a workable standard, in contrast to the unworkable standard of "exclusive possession" that the SEC put forth as an alternative in the Release.

The Change in Beneficial Ownership Standard reflects one of the generally accepted functions of a custodian: prevent loss or unauthorized transfers of ownership of client assets.[17] The core of a custodian's duty is to protect client assets, including taking precautions to ensure that the assets are transferred only to entities or people intended by the client.

There are situations unique to digital assets that test the Change in Beneficial Ownership Standard. Smart contracts are one example. Smart contracts are computer programs that automatically execute when certain conditions are met. These contracts are stored on a blockchain, which makes them immutable and tamper-proof. In a traditional custody arrangement, a custodian performs manual actions on the instruction of the client to transfer an asset between its owner and a buyer. By contrast, with a smart contract, the terms of ownership and any conditions for transfer are programmed into the contract, and one event automatically triggers the transfer of assets. For example, an RIA might want to enter into a smart contract, agreeing to release ownership of a digital asset from A to B automatically once A has received a payment from B. Once the contract is entered into, the custodian would not be able to prevent or delay the transfer, as the contract's code would enforce the terms of ownership and transfer.

The practical effect of the Proposed Rule is that RIAs that have custody of client assets, instead of entering into smart contracts for client assets directly, must instruct a Qualified Custodian to enter into smart contracts on, for example, decentralized finance platforms. It is important to note that the Qualified Custodian can be involved in the initial entry into the smart contract, but where subsequent events triggered by the smart contract occur, the Qualified Custodian will not have an opportunity to take further action to effect or prevent a transfer of the

[16] This letter sets aside certain nuances of the Proposed Rule, including the fact that it only applies when an RIA has "custody" of client assets, because others are better positioned to address the scope of the Proposed Rule, including the expanded definition of "custody."
[17] Page 283 of the Release.

asset to a third party (since the digital assets will be bound by the terms of the smart contract). While it is generally feasible for Qualified Custodians to satisfy the Change in Beneficial Ownership Standard, the SEC should make allowances for exceptions.

Wyoming law provides a path for a Qualified Custodian to enter into a smart contract on behalf of an RIA's client. Under Wyoming law, banks, including Kraken Bank, may elect to provide digital asset custodial services.[18] If a bank so elects, Wyoming law allows for a custodial client to select the manner of the custodial relationship. One of the options authorizes the bank to enter into transactions with the digital asset based on customer instructions.[19] If a customer makes such an election the bank may, based on instructions from its client, (for example, an RIA), undertake transactions, including smart contract transactions, with the digital asset. Wyoming law further sets forth the requirements for a bank to maintain possession or control of client assets while undertaking such transactions which compliments the Change in Beneficial Ownership Standard.[20] The SEC noted that its intent is to be consistent with the rules of the Qualified Custodian's functional regulator,[21] and we believe Wyoming law provides a framework for a Qualified Custodian to exercise control over the digital assets in its care which is entirely consistent with the Change in Beneficial Ownership Standard.

There are, however, instances that justify an exception to the proposed requirement that the Qualified Custodian maintain "possession and control." One example is staking digital assets on a proof of stake network. An RIA may choose to stake its client's digital assets on a blockchain to support the consensus mechanism and to receive more digital assets in return. The smart contracts that a user enters into on many proof of stake networks provide for "slashing," or deletion of digital assets, in the event that the validator violates the network's rules (for example, by being inoperative for too long or for "double-signing," submitting two signed messages for the same block). If slashing occurs, some of the digital assets that the Qualified Custodian assigned to the affected validator will be lost (in other words, the beneficial ownership will transfer away from the client), without the Qualified Custodian's ability to "participate" in the "change in beneficial ownership."

We recommend that the SEC provide for an exception to the "possession and control" requirement for changes in beneficial ownership that occur as a result of rules (such as slashing) programmed into decentralized protocols that take effect once a digital asset is committed to the protocol. Without such an exception, institutional clients may be unable to, for example, hire

[18] W.S. 34-29-104(a).

[19] W.S.34-29-104(d)(ii) and (e).

[20] W.S.34-29-104(e) provides that one way in which a bank is deemed to maintain possession or control of client assets by entering into an agreement with the counterparty to a transaction which contains a time for return of the asset and other customary terms in securities or commodities transactions.

[21] Page 284 of the Release.

RIAs to manage digital assets that they desire to stake on proof of stake protocols, which would be bad for institutional investors (since they would be denied the benefit of the professional expertise of RIAs) and bad for digital assets (since ownership of proof of stake digital assets would likely decline among U.S. institutional investors).

The SEC considered a different standard for "possession and control" from the Change in Beneficial Ownership Standard in the Proposed Rule which is not workable.[22] The SEC first raised the idea of "exclusive possession" standard in the context of the Securities Exchange Act of 1934. In the SEC Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers released on April 27, 2021, the SEC explained that, "[a] digital asset security that is not in the exclusive physical possession or control of the broker-dealer because, for example, an unauthorized person knows or has access to the associated private key (and therefore has the ability to transfer it without the authorization of the broker-dealer) would not be held in a manner that complies with the possession or control requirement of Rule 15c3-3 and thus would be vulnerable to the risks the rule seeks to mitigate."

Some comment letters to that proposal pointed out the difficulty of this standard, given the novelty of this new asset class.[23] We echo these concerns, which the SEC acknowledged in the Release.[24] Loss of the private keys associated with a digital asset means loss of the asset. Some Qualified Custodians may create multiple copies of private keys in order to guard against this eventuality. Regulators of these custodians should (as the Wyoming Division of Banking does) generally have examination requirements in place regarding the safeguarding of these private keys, however, depending on the custodian's chosen method of private key management, it may be impossible to prove the negative, i.e. that nobody but the Qualified Custodian has the private keys.[25] The SEC asked in the Proposed Rule whether requiring exclusive possession improves safeguarding of digital assets. The answer is that rigid standards would serve only to slow adoption of digital assets by RIAs, rather than to improve their safeguarding.

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[22] Page 66 of the Release.

[23] *See, e.g., SIPA Comment Letter regarding Custody of Digital Asset Securities by Special Purpose Broker-Dealers* (May 13, 2021), available at https://www.sec.gov/comments/s7-25-20/s72520-8796290-237862.pdf; *Chamber of Digital Commerce Comment Letter regarding Custody of Digital Asset Securities by Special Purpose Broker-Dealers* (April 5, 2021) available at https://www.sec.gov/comments/s7-25-20/s72520-8634796-230930.pdf.

[24] *See* footnote 125 of the Release.

[25] Wy. Admin. Rule, Ch. 19, Section 8.

We appreciate the opportunity to provide feedback on this important issue and look forward to working with the SEC to refine the Proposed Rule to better acknowledge the particulars of digital asset custody, as well as the banking laws already applicable to Qualified Custodians.

Respectfully,

Trevor Rutar
CEO
Kraken Bank