

Via Electronic Submission and Email (2023-NPRM-PaymentApps@cfpb.gov)

January 8, 2024

Comment Intake—LP Payment Apps Rulemaking
Consumer Financial Protection Bureau
c/o Legal Division Docket Manager
1700 G Street NW
Washington, DC 20552

Re: Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications (Docket No. CFPB–2023–0053 or RIN 3170–AB17)

Dear Sir or Madam:

Paradigm Operations LP (“**Paradigm**” or “**we**”)¹ appreciates the opportunity to comment on the proposal by the U.S. Consumer Financial Protection Bureau (“**CFPB**”) to establish supervisory authority over larger participants in the general-use digital consumer payment applications market pursuant to Section 1024 of the Consumer Financial Protection Act (“**CFPA**”).² Paradigm respectfully submits that the proposed rule (the “**Proposed Rule**”) must be modified or withdrawn because it would allow the CFPB to exercise regulatory authority that Congress did not grant to it under any law to supervise providers of novel software applications used to interact with crypto-assets and blockchain networks (“**Crypto Wallets**”).

We write to highlight what we believe to be the three most problematic areas within the Proposed Rule:

- (1) Despite the lack of a clear Congressional grant of authority to the CFPB to regulate the Crypto Wallet market, the CFPB seeks to install itself as supervisor of an industry of massive economic and political significance. Indeed, the CFPB seeks such authority under a provision designed to allow the agency to regulate student loan and automobile financing. The major questions doctrine prohibits the CFPB from exercising this supervisory authority over Crypto Wallet providers without express Congressional authorization.

¹ Paradigm is a registered investment adviser that manages funds focused on crypto and related technologies at the frontier. Paradigm invests in, builds, and contributes to companies and protocols with as little as \$1M and as much as \$100M or more. More information about Paradigm is available online. See Paradigm, <https://www.paradigm.xyz/>.

² *Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications*, 88 Fed. Reg. 80197 (Nov. 17, 2023) (the “**Proposing Release**”).

- (2) The proposed definition of “wallet functionality” is sufficiently broad to capture providers of Crypto Wallet software that do not custody crypto-assets on behalf of users or otherwise intermediate transactions. This unprecedented expansion of supervisory authority over providers of self-managed software applications would subject software developers to supervisory regulation on par with “Big Tech” payment processors. This over-inclusive supervisory regime would drive many software providers offshore and limit options for U.S. consumers, thereby impairing financial inclusion and increasing the risk of consumer harm.
- (3) The CFPB fails to consider and substantiate the costs and benefits of the Proposed Rule in contravention of black letter administrative law. The Proposing Release explains that the CFPB did not find sufficient information to predict how the increased compliance costs would impact general-use digital consumer payment application providers or their customers, let alone the potential costs and benefits unique to Crypto Wallet providers and users.

In response to the issues noted above and described more fully herein, Paradigm urges the CFPB to consider expressly excluding Crypto Wallet providers or, at the minimum, pure software providers, from the Proposed Rule at this time. Should the CFPB choose to move forward with the rulemaking, Paradigm respectfully requests that the CFPB consider increasing the “larger participant” annual volume of consumer payment transactions threshold from \$5 million to at least \$500 million for Crypto Wallet providers.

Paradigm appreciates the opportunity to address these issues and urges the CFPB to reconsider the Proposed Rule.

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I. The Proposed Definition of the “General-Use Digital Consumer Applications” Would Include Products and Services that the CFPB Does Not Have Authority to Regulate

Under the guise of establishing a supervisory framework for consumer payments applications, the CFPB seeks to crown itself as the supervisor of all blockchain and crypto-asset products and services, including those wholly unrelated to payments. This sweeping amplification of CFPB supervisory authority over politically and economically significant emerging technologies provides “a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.”³ Indeed, the CFPB’s expansion of authority into the blockchain and crypto-asset market would exceed the agency’s authority to regulate consumer financial services and violate the major questions doctrine.

A. The Proposed Definition of the “General-Use Digital Consumer Applications” Market is Excessively Broad and Would Include Blockchain and Crypto-Asset Products and Services Unrelated to Payments

The Proposed Rule would define the market for “general-use digital consumer payment applications” to include all manner of digital wallet applications designed to enable consumers to send and receive cash payments (“**Cash Wallets**”) as well as Crypto Wallets, a novel class of applications that allow consumers to interact with crypto-assets on blockchain networks. Although both Cash Wallet and Crypto Wallet providers colloquially use the term “wallet” to refer to each type of service, Cash Wallets and Crypto Wallets have very little in common. Yet the Proposed Rule would sweep both types of

³ See *West Virginia v. EPA*, 142 S.Ct. 2587, 2595 (2022).

applications under the umbrella of “general-use digital consumer applications” and institute uniform supervision standards for both of these disparate technologies.

A Cash Wallet, also known as a “stored value” or “prepaid access” account, is similar to a bank account. Cash Wallet customers are able to transfer funds from a bank account into an account with the Cash Wallet provider so that the customer can easily use such funds for a specific purpose, such as remittances, or to make purchases within an ecosystem, such as a family of video games. When a customer deposits funds to a Cash Wallet, the Cash Wallet provider typically custodies and maintains such funds together with the funds of other customers on an omnibus basis in a “for the benefit of” bank account. When the customer initiates a transfer of funds, the Cash Wallet provider must rely upon the Automated Clearing House (ACH) or bank wire to move such funds.

In contrast, a Crypto Wallet is a blockchain network address to which crypto-assets may be allocated. After a Crypto Wallet user loads crypto-assets to the blockchain network address, the user may freely transfer such crypto-assets to any other Crypto Wallet directly on the blockchain, without any intermediation by the Crypto Wallet provider, any bank or payment system. Furthermore, unlike cash deposits in a bank account, crypto-assets represent all manner of goods and services. For example, one of the world’s largest ticket vendors offers concert tickets in crypto-asset format and fine art auction houses across the globe auction precious works of art in the crypto-asset medium by the likes of Damien Hirst, Refik Anadol, and Beeple.⁴

Yet the CFPB proposes to lump all types of crypto-assets together with fiat currencies as “funds” and thereby bring all Crypto Wallets within the CFPB’s supervisory authority. The Proposing Release states that “the CFPB believes that, consistent with its plain meaning, the term ‘funds’ in the CFPB is not limited to fiat currency or legal tender, and includes digital assets that have monetary value and are readily usable for financial purposes, including as a medium of exchange.”⁵ The Proposing Release clarifies that “crypto-assets” are “one such type of digital asset” and references a broad definition of the term “crypto-asset” from a Financial Stability Oversight Council report.⁶ The definition includes any “private sector digital asset that depends primarily on cryptography and distributed ledger or similar technology.”⁷ In other words, the CFPB asserts that it has authority to regulate *all* “crypto-asset” transfers involving consumers as consumer “funds transfers.”

The Proposed Rule would seemingly apply to both non-custodial (or “**Unhosted**”) and custodial (or “**Hosted**”) Crypto Wallet products and services. An Unhosted Crypto Wallet is a software application that enables a user to generate a blockchain address, self-manage the private key associated with the user’s blockchain address, and create and broadcast transactions on the network without any intermediation or supervision by the software provider. Once the user has generated a blockchain address, the user may access and use the address through multiple Unhosted Crypto Wallet applications by inputting the user’s private key (or a “seed phrase”) into each application. The Unhosted Crypto Wallet software is akin to web browser software that enables the user to browse third-party webpages while safekeeping the user’s credentials needed to interact with such webpages. In contrast, a Hosted Crypto

⁴ See, e.g., Ticketmaster, Ticketmaster Launches Token-Gated Sales, Enabling Artists to Reward Fans with Prioritized Ticket Access and Concert Experiences Through NFTs, Mar. 27, 2023, *available at* <https://business.ticketmaster.com/business-solutions/nft-token-gated-sales/>; Christine Bourron, Comprehensive Analysis of the Trade of NFTs at Major Auction Houses: From Hype to Reality, Oct. 7, 2023, Arts 12: 212, *available at* <https://doi.org/10.3390/arts12050212>.

⁵ Proposing Release at 80202.

⁶ *Id.*

⁷ *Id.* at FN 50.

Wallet is a software application that enables a user to engage in blockchain transactions paired with a service in which a third-party custodian manages the user’s private key on the user’s behalf.

Moreover, Crypto Wallet providers offer various types of Crypto Wallet services that raise vastly different regulatory considerations.⁸ Given the broad range of Crypto Wallet business models, Crypto Wallet providers maintain a variety of licenses, registrations and charters at the Federal and State level, including, among other things, trust charters, broker-dealer licenses, money services business registrations, money transmitter licenses, and crypto-asset business licenses.

Irrespective of whether a Crypto Wallet provider is already regulated at the Federal or State level, the Proposed Rule would allow the CFPB to supervise as a “larger participant” any Crypto Wallet provider with users conducting a combined annual covered consumer payment transaction volume of \$5 million or more that is not a “small-business concern” under Section 3(a) of the Small Business Act (“SBA”). Paradigm respectfully disagrees with the CFPB’s estimate that the Proposed Rule would subject approximately 17 entities to CFPB supervisory authority.⁹ Many Crypto Wallet providers would likely exceed the proposed annual transaction volume threshold based on the sum total of their U.S. users’ annual blockchain network transaction fee payments alone¹⁰ and may not qualify as “small-business concerns” under the SBA.¹¹

B. The CFPB’s Attempt to Win Supervisory Authority Over the Blockchain and Crypto-Asset Products and Services Market by Broadly Defining the “General-Use Digital Consumer Applications” Market Violates the Major Questions Doctrine

“Extraordinary grants of regulatory authority are rarely accomplished through ‘modest words,’ ‘vague terms,’ or ‘subtle devices[s].’”¹² Yet the CFPB claims to have discovered “newfound power in the vague language” of Section 1024 of the CFPA to regulate a novel “digital wallet” technology.¹³

Section 1024 of the CFPA authorizes the CFPB to supervise “larger” participants in consumer financial products or services markets.¹⁴ The agency has relied on this authority in limited circumstances to expand its consumer financial services supervisory program to cover larger participants in consumer debt collection, student loan servicing, international money transfers, and automobile financing markets. The CFPB’s proposed use of this provision (designed to allow the agency to supervise consumer financial services) to assert regulatory authority over Crypto Wallet providers represents a paradigm shift in the

⁸ For example, many Unhosted Crypto Wallet software providers utilize multi-party computation (MPC) technology and engage a third-party provider to support private key recovery. Additionally, Hosted Crypto Wallet providers may offer unique security features, such as cold storage, to minimize the risk of a cyber-incident. It is also common for crypto-asset exchange platforms to offer to users both custody and exchange services and therefore many of the most popular exchange platforms provide a Hosted Crypto Wallet to users; some provide an Unhosted Crypto Wallet.

⁹ *See id.* at 80209.

¹⁰ The average fee per transaction on the Ethereum blockchain exceeds seven dollars. *See* Etherscan, Ethereum Gas Tracker, <https://etherscan.io/gastracker> (last accessed Jan. 4, 2024).

¹¹ A “small-business concern . . . shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.” 15 U.S.C. § 632(a). However, a small blockchain software development shop may be “dominant in its field of operation,” given the early stage of blockchain and crypto-asset technology.

¹² *West Virginia*, 142 S.Ct. at 2609 (citing *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001)).

¹³ *Id.* at 2610.

¹⁴ 12 U.S.C. § 5514.

agency's interpretation of the CFPB, and an unheralded expansion of agency authority over blockchain technology.

The Supreme Court has held that when an administrative agency seeks to resolve a major question of economic and political significance, a “merely plausible textual basis for the agency action” is not enough.¹⁵ Instead, the agency “must point to ‘clear congressional authorization’ for the power it claims.”¹⁶ Agency actions have been held to be politically significant if Congress has “engaged in robust debates” over legislation concerning the topic.¹⁷

Under the Proposed Rule, the CFPB seeks to classify all crypto-assets as “funds” subject to consumer financial services regulation and intends to require larger Crypto Wallet providers to submit to CFPB supervision. Notwithstanding the CFPB's assertions in the Proposing Release, several Federal judges have reasoned that crypto-assets are computer code and not, in and of themselves, any type of regulated financial instrument.¹⁸ Indeed, blockchains enable users to move tokenized bits of property in a manner akin to how internet protocols, such as HTTP and SMTP, enable users to move bits of data. A crypto-asset can represent virtually anything from a concert seat license to full ownership of digital artwork. Crypto-assets therefore cannot be monolithically deemed “funds” or anything else, but must instead be evaluated on a case-by-case basis.

The CFPB does not mention crypto-assets, let alone include “a clear Congressional authorization” of the CFPB to supervise providers of Crypto Wallets.¹⁹ Nor does the CFPB provide any evidence of Congressional authorization in the Proposing Release, which simply states that Congress authorized the agency to supervise nonbank covered persons subject to consumer financial services laws. The Proposing Release does not even provide any reasoning to support the conclusion that Crypto Wallet providers are subject to these laws. And yet, the CFPB desires to crown itself as the supervisor of the crypto-asset products and services market, despite the lack of any clearly applicable crypto-asset laws.

Like the internet that came before it, blockchain is a network technology of tremendous political and economic significance. The estimated combined trading volume for all crypto-assets in 2023 was approximately \$76.66 trillion²⁰ – a “significant portion of the American economy”²¹ – and crypto is a major political topic, with presidential candidates on both sides of the aisle campaigning on the issue²²

¹⁵ *West Virginia*, 142 S.Ct. at 2609.

¹⁶ *Id.* (quoting *Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 324, 134 S. Ct. 2427, 189 L. Ed. 2d 372 (2014)).

¹⁷ *Id.* at 2620-21 (Gorsuch, J., concurring). *See, e.g., NFIB v. OSHA*, 142 S. Ct. 661, 662-66, 211 L. Ed. 2d 448 (2022) (finding that the major questions doctrine applied when various vaccine mandate bills considered by Congress had failed, and an agency sought to mandate COVID-19 vaccines for millions of Americans).

¹⁸ *See, e.g., SEC v. Telegram Grp. Inc.*, 448 F. Supp. 3d 352, 371-72 (S.D.N.Y. 2020), *appeal withdrawn sub nom. SEC v. Telegram Grp., Inc.*, No. 20-1076, 2020 WL 3467671 (2d Cir. May 22, 2020) (finding that the Gram crypto-asset “is little more than alphanumeric cryptographic sequence.”); *SEC v. Ripple Labs Inc.*, 20 Civ. 10832 (AT) (July 13, 2023) (Order on Cross-Motions for Summary Judgment), at 15 (“XRP, as a digital token, is not in and of itself a ‘contract, transaction[,] or scheme’ that embodies the *Howey* requirements of an investment contract.”).

¹⁹ *See West Virginia*, 142 S.Ct. at 2609 (citing *Utility Air Regulatory Grp v. EPA*, 573 U.S. 302, 324 (2014)).

²⁰ *See* CoinCodex, Trading Volume, *available at* <https://coincodex.com/trading-volume/> (last accessed Jan. 4, 2024).

²¹ *See West Virginia*, 142 S.Ct. at 2608 (citing *Utility Air*, 573 U.S. at 324).

²² *See* Elizabeth Napolitano, U.S. Presidential Candidates Chat About Crypto, Target Federal Regulators, CoinDesk, Dec. 12, 2023, *available at*

and both houses of Congress considering applicable legislation. Given these facts, it is implausible that Congress secretly intended to delegate to the CFPB supervisory authority over Crypto Wallets through a provision designed to allow the agency to regulate student loan and automobile financing, over fifteen years ago.

Enabling statutes are not choose-your-own adventure books that allow administrative agencies such as the CFPB to “add pages and change the plot line.”²³ Jurisdiction over trillions in finance is not hidden in a tracking space between words in legislation. The major questions doctrine prohibits administrative agencies from exercising authority over matters of major economic and political significance if Congress has not delegated such authority to the agency. The CFPB must make its case to Congress if it believes that it is the appropriate administrative agency to supervise Crypto Wallet providers. Industry stakeholders and other agencies, such as the U.S. Commodity Futures Trading Commission and the Financial Stability Oversight Council,²⁴ have repeatedly called upon Congress to enact comprehensive crypto-asset legislation and multiple bills are under consideration today. Paradigm would welcome the CFPB’s input on the proposed legislation but submits that the agency currently lacks Congressional authorization to supervise or apply consumer financial services laws to Crypto Wallet providers.

II. The Proposed Definition of “Wallet Functionality” Would Constitute an Unprecedented Expansion of Supervisory Authority over Software Providers and Hamper Financial Inclusion

The Proposed Rule would ensnare providers of Unhosted Crypto Wallet software applications within the CFPB’s consumer financial services regulatory perimeter alongside massive financial intermediaries, such as payment processors. Indeed, the CFPB proposes an unprecedented expansion of supervisory authority over providers of self-managed software applications akin to web browsers and email clients. Because of the high expected compliance costs, the Proposed Rule would significantly curtail the Unhosted Crypto Wallet software options available to consumers and thereby impair financial inclusion.

The Proposed Rule would capture Unhosted Crypto Wallet software providers within the term “covered payment functionality,” which would be broadly defined to include “wallet functionality.” This term would mean “a product or service that: (1) Stores account or payment credentials, including in encrypted or tokenized form; and (2) Transmits, routes, or otherwise processes such stored account or payment credentials to facilitate a consumer payment transaction.”²⁵ The “including in encrypted . . . form” language would capture digital wallet software that stores “an encrypted version of a payment account number,” like a private key managed by Unhosted Crypto Wallet software.²⁶ Despite the reality that Unhosted Wallet software providers do not intermediate software users’ transactions, the CFPB intends to supervise such software providers on par with “Big Tech” payment processors.

<https://www.coindesk.com/policy/2023/12/12/us-presidential-candidates-chat-about-crypto-target-federal-regulators>.

²³ *Id.* (citing E. Gellhorn & P. Verkuil, *Controlling Chevron Based Delegations*, 20 *Cardozo L. Rev.* 989, 1011 (1999)).

²⁴ On which the CFPB’s Director serves as a Member. See also Clare Williams, *FSOC calls for legislation on crypto spot markets*, *American Banker*, Oct. 3, 2022, available at <https://www.americanbanker.com/news/fsoc-calls-for-legislation-on-crypto-spot-markets> (calling for Congress to write and pass legislation to regulate crypto spot markets).

²⁵ Proposed Rule § 1090.109(a)(2).

²⁶ Proposing Release at 80205.

The CFPB’s proposed approach is vastly out of alignment with that of its peer U.S. financial services regulators. For example, the U.S. Department of Treasury’s Financial Crimes Enforcement Network (“**FinCEN**”) concluded that such software providers are not “money services businesses” under the Bank Secrecy Act because they do not intermediate users’ transactions.²⁷ Instead, FinCEN concluded that the Unhosted Wallet user has “total independent control” over the user’s crypto-assets and transacts with such crypto-assets by interacting directly with the blockchain.²⁸

It is important to consider that Unhosted Crypto Wallet software providers are typically small software development firms rather than global customer-facing financial services businesses. Unhosted Crypto Wallet software is licensed to users by a broad range of software providers, oftentimes on an open-source basis. Many of these software providers and developers do not have customer relationships with users or insight into the volume of payment transactions attributable to specific users. Additionally, unlike an account at a financial services provider, the same Unhosted Crypto Wallet may be accessed and used through multiple unaffiliated Unhosted Crypto Wallet software applications. It would be impossible for the majority of Unhosted Crypto Wallet providers to determine whether they are potentially subject to supervision without significant and commercially destructive changes to their software products and business models.

Paradigm believes that the Proposed Rule, if adopted in its current form, would result in U.S. consumer harm by significantly curtailing the options for self-managed digital wallet software within the U.S. Many high quality Unhosted Crypto Wallet software providers are likely to opt to limit access to their software products to only persons located outside the U.S. As a result, U.S. consumers may become forced to use Unhosted Wallet software offered by offshore companies that evade legal compliance. These users may be subject to fraud, scams and cyber incidents without any recourse. Other U.S. consumers will opt to forego use of Unhosted Crypto Wallet software altogether and lose out on an opportunity for equitable financial access. The result will be taking away protection from U.S. consumers, contrary to the core mission of the Bureau.

III. The Proposed Rule is Arbitrary and Capricious Because the CFPB Failed to Adequately Consider and Substantiate the Proposed Rule’s Costs and Benefits

It is black letter administrative law that an agency must consider both the costs and benefits of a proposed regulation and allow the public an opportunity to comment on the same. “[A] regulation is arbitrary and capricious if the agency ‘failed to consider an important aspect of the problem.’”²⁹ Agencies such as the CFPB must substantiate “the costs and benefits associated with the [Proposed Rule]” and identify benefits that “bear a rational relationship to the . . . costs imposed.”³⁰

In complete disregard of this requirement, the Proposing Release includes a single paragraph discussing the costs of increased compliance on digital consumer payment application providers, stating that the “CFPB lacks detailed information with which to predict the extent to which increased costs would be borne by providers or passed on to consumers, to predict how providers might respond to higher costs, or to predict how consumers might respond to increased prices.”³¹ In other words, the CFPB concedes

²⁷ See 2019 FinCEN Guidance at 16-17.

²⁸ See *id.*

²⁹ *Mexican Gulf Fishing Co. v. U.S. Dep’t of Com.*, 60 F.4th 956, 973 (5th Cir. 2023) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983)).

³⁰ *Id.* (citing *Pub. Citizen v. EPA*, 343 F.3d 449, 455 (5th Cir. 2003)).

³¹ Proposing Release at 80212.

that it lacks sufficient information to substantiate the costs and benefits of the Proposed Rule on digital consumer payment application providers and their customers, let alone the potential costs and benefits of scoping in Crypto Wallet providers. The CFPB may believe that the Proposed Rule would be beneficial for purposes of consumer protection and the “purported benefits may be more than purely hypothetical,” but the CFPB is required by law to substantiate these benefits together with the potential costs of finalizing the rulemaking.³²

The costs and benefits of the Proposed Rule can only be understood after a vast and voluminous process of research and stakeholder engagement, including with industry advocates and firms. The Proposing Release does not indicate that the CFPB has engaged in any such process. To the contrary, the Proposing Release states that the agency “lacks sufficient information on a substantial number of known market participants necessary to estimate their larger-participant status” and has “limited data . . . to quantify the potential benefits, costs, and impacts of the Proposed Rule.”³³ The CFPB does not appear to have any appreciation of the number of market participants that would be subject to supervision under the Proposed Rule or the benefits, costs, and impacts of the Proposed Rule, as evidenced by its belief that only 17 entities would be covered in total.³⁴

Crypto-asset industry participants are also subject to significant regulatory costs at the State level today, such as legacy money transmitter laws and purpose-built state crypto regulatory regimes in states such as Louisiana, California, and New York, and these costs are often passed on to consumers in the form of higher fees.³⁵ The Proposed Rule would pile additional compliance obligations upon these already heavily-regulated businesses.³⁶ This duplicative regulatory scheme may be the proverbial straw that breaks the camel’s back, causing Crypto Wallet providers to lose many of their customers or even relocate offshore. The cost of driving the industry offshore would be significant and needs to be considered together with any potential benefits of the rulemaking. The CFPB has failed to demonstrate it has made such a consideration in the Proposing Release.

Paradigm submits that the CFPB has acted arbitrarily and capriciously by proposing new regulations without considering and substantiating the costs and benefits of the regulations and affording stakeholders an opportunity to comment on such costs and benefits.

IV. Recommendations

³² See *Chamber of Com. of the USA v. SEC*, No. 23-60255 at p. 21 (5th Cir. Oct. 31, 2023).

³³ Proposing Release at 80211.

³⁴ See *id.* at 80209.

³⁵ See 23 N.Y.C.R.R. Part 200; LA Rev Stat § 6:1385; CA Assembly Bill 39 (AB 39), the “Digital Financial Assets Law” (signed into law Oct. 13, 2023).

³⁶ For example, the New York State Department of Financial Services conducts examinations of the financial condition, internal controls, legal and regulatory compliance, management and systems and technology of New York State-licensed money transmitters. See New York State Department of Financial Services, Examination of Money Transmitters, available at https://www.dfs.ny.gov/apps_and_licensing/money_transmitters/examination_of_mt#:~:text=The%20examination%20focuses%20on%20compliance,and%20soundness%20of%20the%20licensee (last accessed Dec. 26, 2023). Additionally, the agency examines each “bitlicense” holder at least once every two years to assess the financial condition of the licensee, the safety and soundness of the conduct of its business, the policies of its management and compliance with legal and regulatory requirements, among other matters. 23 N.Y.C.R.R. § 200.13. It does not limit its examination to compliance with State law and is known to coordinate with Federal agencies.

In light of the unique issues raised by application of the Proposed Rule to Crypto Wallets, Paradigm respectfully requests that the CFPB consider substantially revising or withdrawing the Proposed Rule.


In the event that the CFPB chooses to move forward with the rulemaking, Paradigm strongly recommends that the CFPB consider expressly excluding Crypto Wallet providers or, at the minimum, Unhosted Crypto Wallet providers, from the Proposed Rule at this time. As discussed in the preceding sections of this comment letter, the inclusion of Crypto Wallet providers within a final rule would exceed the agency's statutory authority and institute a duplicative regulatory framework. Moreover, the CFPB has failed to consider the costs and benefits of such broad application of its authority under Section 1024 of the CFPA and must do so before finalizing any rule that would so significantly impact the crypto-asset market.

If the CFPB opts to disregard this recommendation, Paradigm urges the CFPB to consider increasing the "larger participant" annual volume of consumer payment transactions threshold for Crypto Wallet providers. Many Crypto Wallet providers, particularly those developing the most innovative products and services, may not meet the definition of a "small-business concern" under the SBA and therefore would be subject to CFPB supervision to the extent such providers satisfy the annual transaction volume threshold.³⁷ Paradigm believes that an annual transaction volume of \$5 million is sufficiently low to capture a large swath of smaller Crypto Wallet providers and therefore submits that an annual transaction volume of \$500 million or higher would be a more industry-appropriate threshold.

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Paradigm appreciates the CFPB's consideration of our comments and would be pleased to engage with the CFPB as the Proposed Rule develops. If you have questions or would like to discuss these comments further, please reach out to agrieve@paradigm.xyz.

Sincerely,

DocuSigned by:

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Alexander Grieve
Government Affairs Lead, Paradigm

cc: Michael Selig
Willkie Farr & Gallagher LLP

³⁷ See 15 U.S.C. § 632(a).