**INTRODUCTION**

Payward Inc., d/b/a/ Kraken (“Kraken”) is pleased to respond to ESMA’s second Public Consultation on Technical Standards specifying certain requirements of the Markets in Crypto-Assets (‘MiCA’) Regulation EU 2023/1114.

Kraken remains committed to growing its business in the EU regulatory perimeter. Our Irish subsidiary Payward Europe Solutions Limited (‘PESL’) was granted registration as a Virtual Asset Service Provider (‘VASP’) with the Italian Organismo Agenti e Mediatori (‘OAM’) in June 2022, with the Central Bank of Ireland (‘CBI’) in April 2023, and with the Bank of Spain in September 2023. We are seeking further registrations and licences in the EU Member States as appropriate. This will include us applying for a Crypto-Asset Service Provider (‘CASP’) licence under MiCA, when available.

Founded over 12 years ago, Kraken is one of the world’s oldest and largest global digital asset platforms. Kraken provides products and services to retail and institutional customers that support key components across the digital asset market value chain. Outside of the EU, Kraken holds a number of registrations, licences, authorisations and approvals including in the United States, United Kingdom, Canada, and Australia, among other developed and emerging markets.  Subject to local regulatory requirements and authorisations, Kraken’s global product and service offering includes crypto trading, investment, benchmarks, staking, banking, and others.

Kraken welcomes MiCA, as it provides legal certainty, including a clear path to licensing, and will enable the growth of our business in the EU in a manner which both protects customers and promotes confidence in the market.

We would be pleased to discuss any points or questions raised in further detail.

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**SUMMARY**

* **Sustainability Indicators**:
  + We support the proposal to allow the use of estimates for disclosures where the sustainability data is missing or challenging to obtain with accuracy.
  + We recommend adding necessary flexibility in the disclosure of certain metrics, given this is a novel obligation, and we suggest not mandating some additional metrics, e.g. non-recycled water ratio.
* **Business continuity**:
  + We support the proportionality of the requirements, including not requiring a dedicated function for business continuity from CASPs and ask for more precise guidance in several areas, e.g. a “timely” communication to clients in the event of disruptions.
  + On communication to clients, we recommend the communication obligation to be reduced to only for those disruptions that have potential impact on the services of CASPs, as opposed to general notifications on disruptions on any DLT.
* **Trade transparency**:
  + We appreciate that ESMA acknowledges that crypto and public blockchains are inherently more transparent than traditional asset classes, thus calibrating the transparency rules under MiCA appropriately, and included waiver-like provisions. Nevertheless, we suggest simplifying the data fields for pre- and post-trade transparency.
  + We recommend ESMA draws a more clearly defined distinction between “centralised exchange” CEX and “decentralised exchange” (DEX).
* **Record-keeping**:
  + We support the proposed requirements on record keeping. This is more proportionate than regulatory reporting.
  + We recommend that core APIs could be harmonised but allow for custom data to be added on top of the required fields. With regards to gas fees record keeping, we note that they are not associated with off-chain transactions and should only apply to on-chain transactions.
* **White papers**:
  + We note that iXBRL is a new format for most in the industry, and while PDF is typically used, it is not machine readable. While we agree with ESMA that it may not be costly from the technology cost perspective, it will nevertheless require additional FTE in issuers relations, compliance, and others.
  + We support an editable template for whitepapers by ESMA to cover also the remaining sections of the whitepaper. We specify some data elements in the template of white paper which could use further clarifications e.g. “Information on the risks”.
* **Inside information:**
  + We support the proposed definition of “inside information”, but recommend  clarification of a situation where multiple parties can be *partially* directly concerned.
  + Service provider’s website and own applications are the appropriate sources of information for clients. For dissemination, social media or third-party data aggregators should be strictly optional. Any alerts on inside information in applications should be opt-in.