

RON WYDEN, OREGON, CHAIRMAN

DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
ROBERT MENENDEZ, NEW JERSEY  
THOMAS R. CARPER, DELAWARE  
BENJAMIN L. CARDIN, MARYLAND  
SHERROD BROWN, OHIO  
MICHAEL F. BENNET, COLORADO  
ROBERT P. CASEY, Jr., PENNSYLVANIA  
MARK R. WARNER, VIRGINIA  
SHELDON WHITEHOUSE, RHODE ISLAND  
MAGGIE HASSAN, NEW HAMPSHIRE  
CATHERINE CORTEZ MASTO, NEVADA  
ELIZABETH WARREN, MASSACHUSETTS

MIKE CRAPO, IDAHO  
CHUCK GRASSLEY, IOWA  
JOHN CORNYN, TEXAS  
JOHN THUNE, SOUTH DAKOTA  
RICHARD BURR, NORTH CAROLINA  
ROB PORTMAN, OHIO  
PATRICK J. TOOMEY, PENNSYLVANIA  
TIM SCOTT, SOUTH CAROLINA  
BILL CASSIDY, LOUISIANA  
JAMES LANKFORD, OKLAHOMA  
STEVE DAINES, MONTANA  
TODD YOUNG, INDIANA  
BEN SASSE, NEBRASKA  
JOHN BARRASSO, WYOMING

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

JOSHUA SHEINKMAN, STAFF DIRECTOR  
GREGG RICHARD, REPUBLICAN STAFF DIRECTOR

November 28, 2022

Dave Ripley  
Chief Executive Officer  
Payward Ventures Inc. (d.b.a. Kraken)  
237 Kearny Street #102  
San Francisco, CA 94108

Dear Mr. Ripley:

I write to inquire about what procedures and policies Kraken has put in place to protect its customers' assets in the event that your company files for bankruptcy or otherwise experiences financial distress.

As you know, the recent collapse of crypto exchange FTX has left approximately one million customers facing significant—if not total—losses of their assets. News reports and statements by FTX leadership indicate the initial failure stemmed from outrageous mismanagement, including few governance controls, poor corporate accounting and misappropriation of customer assets. Multiple federal agencies have announced investigations into FTX, which is now in bankruptcy proceedings.

U.S. law aims to protect investors from losses stemming from similar situations. When a registered securities broker-dealer faces bankruptcy or significant financial trouble, their customers may be protected by the Securities Investor Protection Corporation (SIPC), which was established by Congress in the 1970s to bolster investor protection in securities markets. SIPC can compensate customers for their losses up to \$500,000 through funds pooled collectively by the brokerage industry. Additionally, when an exchange is registered to the Commodity Futures Trading Commission (CFTC), its customers are protected against fraud, nondisclosure, misappropriation of funds and other failures of supervision through the CFTC's Repairs Program.

U.S. law also aims to protect consumers from failures of banks and other depository institutions. Consumer deposits in bank checking and savings accounts are usually insured through the Federal Deposit Insurance Corporation (FDIC) up to \$250,000 in the event that the bank fails. Finally, deposits at all federally chartered and some state-chartered credit unions are secured up to \$250,000 by the National Credit Union Share Insurance Fund (NCUSIF). Like FDIC insurance, NCUSIF is backed by the full faith and credit of the United States.

Unfortunately, consumers who entrusted their crypto assets to FTX have no such protections. As Congress considers much-needed regulations for the crypto industry, I will focus on the clear need for consumer protections along the lines of the assurances that have long existed for customers of banks, credit unions and securities brokers. If these protections had been in place

before the failure of FTX, far fewer retail investors would be facing precipitous financial harm today. To that end, please provide me with answers to the following questions by December 12, 2022:

1. How many subsidiary companies fall under Kraken's umbrella, and how many entities are otherwise affiliates of Kraken?
  - a. How does Kraken segregate assets bought or sold on Kraken from its subsidiaries or affiliates?
2. Does Kraken segregate customer assets from corporate or institutional assets (including any assets of Kraken's subsidiaries or affiliates)?
  - a. If so, what safeguards are in place to ensure these assets are not commingled?
3. Does Kraken use customer funds for any purpose that is not disclosed to the customer?
4. Please provide a list of any real estate acquisitions made by Kraken or any of its executives or directors financed by customer funds.
5. Does Kraken have any policies, procedures, practices or safeguards in place to guard against suspected market manipulation or otherwise suspicious trading, including wash trading? If so, please describe.
6. Does Kraken, its directors, officers or employees, or any subsidiaries or affiliates use customer data to inform institutional or personal trading, including futures or options trading?
  - a. If so, to what extent does Kraken inform customers that Kraken engages in trading that may disadvantage customers' trades in favor of Kraken's own positions?
7. What is Kraken's ratio of debt-to-assets and debt-to-equity (including capital)?
  - a. Do you consider Kraken to be highly leveraged?
8. Please provide a copy of Kraken's most recent balance sheet with a full listing of the company's assets and liabilities. Please clarify whether this document has been audited and whether Kraken intends to make this document public.
9. How does Kraken hold and safeguard its reserves (regarding both capital and equity), and will Kraken publish proof-of-reserves?
  - a. If so, will the proof-of-reserves be externally audited by a firm that follows the Financial Accounting Standards Board's recommended methods for auditing crypto assets to the greatest extent possible? Please provide any such audits.
  - b. What amount of Kraken's reserves, if any, is made up of Kraken-issued tokens, or tokens issued by any of Kraken's affiliates or subsidiaries?
10. Has Kraken had external auditors conduct annual audits of financial statements? If so, please provide the names of the entities that conducted the audits, and whether those entities ever alerted Kraken of any financial irregularities over the course of its audits.

a. Please describe any steps taken by Kraken to address any potential financial irregularities, tax compliance issues or money laundering concerns identified by internal or external auditors, as well as whether Kraken alerted any relevant regulators of these findings.

11. Does Kraken carry any form of insurance that would benefit Kraken's customers in the event of its bankruptcy, theft or hack, or any other risks to customer funds? If so, please describe, including any limits to insurance coverage.

12. Would Kraken participate in an industry-funded insurance fund, similar to the compensation fund established by SIPC?

13. What steps has Kraken taken to work with other companies in the crypto industry to develop protections for investors and customers?

Thank you for your prompt and thorough response to these questions. If you have any questions about this letter, please contact Madison Moskowitz in my office at (202) 224- 5244 or [Madison\\_Moskowitz@Wyden.Senate.Gov](mailto:Madison_Moskowitz@Wyden.Senate.Gov).

Sincerely,



Ron Wyden  
United States Senator