



31 July 2023

‘Public Comment on IOSCO’s Consultation Report on Policy Recommendations for Crypto and Digital Asset Markets’

The Futures Industry Association (FIA)¹ welcomes the opportunity to respond to the IOSCO [public consultation](#) on its recommendations to jurisdictions across the globe as to how to regulate crypto-asset activities. The report appears focused on crypto-asset activities on centralised exchanges, and FIA’s response is focused on this activity.

FIA supports IOSCO’s efforts to bring greater consistency to regulatory frameworks and oversight of crypto-asset activities in its member jurisdictions as well as its efforts to address concerns related to customer protection, conflicts of interest and the cross border nature of these markets. FIA also urges IOSCO to be thoughtful as it contemplates specific recommendations to ensure they do not unduly prevent or hinder innovation.

FIA believes the regulation of digital assets should be underpinned by the simple, yet fundamental, regulatory principle: “same business, same risks, same rules.” FIA is pleased to see this fundamental regulatory principle acknowledged in the IOSCO consultation as well as in the Financial Stability Board’s global regulatory framework for crypto-asset activities released 17 July 2023.²

FIA welcomes new participants to crypto-asset markets offering exchange, clearing or intermediary services, but urges regulators to ensure these new participants adhere to the same rules that existing market participants must adhere to. The existing rules, developed and refined over several decades, with the benefit of significant coordination from standard-setting bodies like IOSCO, were established to reduce conflicts of interest and protect both customers and market integrity.

In reviewing the consultation, and specifically the definition of a crypto-asset service provider, we believe it is important to note that FIA members, including clearing firms, exchanges, and clearinghouses, are highly regulated entities that conduct a wide range of activities that support trading in listed derivatives. These activities include but are not limited to, facilitating trading as agent and principal, operating and overseeing markets, diligencing the financial soundness of market participants, custodial services, and providing clearing infrastructure and other ancillary services such as lending.

We appreciate that the intent of IOSCO in publishing these recommendations is to encourage a level-playing field between crypto-assets and traditional financial markets and reduce the risk of regulatory arbitrage arising from differences in how rules may apply and be enforced relating to crypto-assets and traditional financial markets.

¹ FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, DC. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

² <https://www.fsb.org/2023/07/fsb-finalises-global-regulatory-framework-for-crypto-asset-activities/>



FIA encourages IOSCO to recommend that crypto-asset service providers (CASPs) be subject to the same regulation as existing market participants where their activities present same risks. Not only will this promote fair competition in emerging markets; it will also help ensure they are safe and effective.

FIA appreciates IOSCO's principles-based and outcomes-focused approach to bring CASPs into the global regulatory framework and would like to highlight three key areas we appreciate seeing contemplated in the recommendations.

Conflicts of Interest

The regulatory framework for traditional securities and commodities markets generally separate key functions – including exchange trading, brokerage, market-making and other proprietary trading, clearing, custody, and settlement – into different entities, or registration categories. Collapsing various entities into a single legal entity, or an affiliated group of entities, does not necessarily mean that the rules applicable to the surviving entity, or affiliated entities, satisfy the wide range of protections embedded in each layer of the existing regulatory regime.

FIA appreciates that IOSCO has proposed recommendations to address risks arising, in particular, from vertically integrated crypto-asset trading platform business models. Having intermediaries as an independent layer in financial markets helps to avoid conflicts of interest that can arise when the functions of intermediaries are combined with the functions of exchanges and clearinghouses in a single entity, not to mention market makers that share common ownership of a trading platform. If vertically integrated market structures are permitted, regulators should take affirmative steps to ensure that the consolidated structure protects customers and market integrity.

FIA generally welcomes IOSCO's proposed recommendations addressing conflicts of interest, including that regulators:

- should require a CASP to have effective governance and organisational arrangements including systems, policies and procedures that would address conflicts of interest, including those arising from different activities conducted, and services provided by a CASP or its affiliated entities;
- should consider whether certain conflicts are sufficiently acute that they cannot be effectively mitigated and may require more robust measures and regulation of certain activities and functions;
- should require a CASP to have accurately disclosed each role and capacity in which it is acting at all times;
- should require a CASP, when acting as an agent, to handle all client orders fairly and equitably;
- should require a CASP that operates a market or acts as an intermediary to provide pre- and post-trade disclosures consistent with those that are required in traditional financial markets; and



- should require a CASP to manage and mitigate conflicts of interest surrounding the issuance, trading and listing of crypto-assets.

Customer Protection

The regulation of traditional financial markets prohibits abusive practices that undermine market integrity. Additionally, the existing regulatory frameworks built around the futures, options and centrally cleared derivatives markets include strong disclosure and segregation requirements aimed at protecting customers.

Heavily regulated clearing firms play an important intermediary role in the system -- protecting not only customers and customer funds but also clearinghouses and the broader financial system. They are required to segregate client assets from their own assets and protect client assets in case the firm or an affiliated entity fails. This is a foundation of the current customer protection regime for the futures markets and should be reflected in emerging digital asset markets as well.

Additional protections afforded by clearing firms include risk disclosures, capital resources, credit and collateral management, anti-money laundering requirements, guaranteeing customer trades, and "know your customer" obligations.

FIA generally welcomes IOSCO's proposed recommendations, related to customer protections, ensuring against market manipulation, and preserving the custody of client assets, including that regulators:

- cover all relevant fraudulent and abusive practices such as market manipulation, insider dealing and unlawful disclosure of inside information; money laundering/terrorist financing; issuing false and misleading statements; and misappropriation of funds;
- should require a CASP to ensure that client assets are adequately protected at all times, including when placed with a third party chosen by the CASP, specifically aiming to minimize the risk of loss or misuse;
- should require a CASP to place Client Assets in trust, or to otherwise segregate them from the CASP's proprietary assets;
- should require a CASP to disclose how client assets are held, and the arrangements for safeguarding and custody of those assets; and
- should require a CASP to have systems, policies, and procedures to conduct regular and frequent reconciliations of client assets.

Cross Border

International regulatory cooperation is critical given the global nature of the crypto-asset markets, and the regulatory approach should seek to achieve regulatory outcomes for investor protection and market integrity that are the same as those required in traditional financial markets.



FIA generally welcomes IOSCO's proposed recommendations related to addressing cross-border risks and regulatory cooperation, that regulators adopt best practices in international cooperation in order to help ensure effective supervision and enforcement, and to reduce the risk of money laundering.

Conclusion

FIA supports IOSCO's efforts to bring greater consistency with respect to regulatory frameworks and oversight of crypto-asset activities in its member jurisdictions as well as efforts to address concerns related to market integrity and customer protection. The fundamental regulatory principle of same business, same risks, same rules, should guide global regulators as they assess the adequacy of their regulatory regimes governing crypto-asset activities. This principle will ensure a level playing field for all current and prospective market participants and protect customers by ensuring they receive all the components of a robust regulatory framework.

Most respectfully,

A handwritten signature in black ink that reads 'Walt L. Lukken'.

Walt L. Lukken
President and CEO