

# INVESTOR ADVISORY PANEL

July 31, 2023

General Secretariat  
International Organization of Securities Commissions (IOSCO)  
C/ Oquendo 12  
28006 Madrid, Spain  
Email: [cryptoassetsconsultation@iosco.org](mailto:cryptoassetsconsultation@iosco.org)

## **Re: IAP Comment on IOSCO's Consultation Report on Policy Recommendations for Crypto and Digital Asset Markets**

On behalf of the Investor Advisory Panel (IAP), I wish to thank you for providing this opportunity to comment on the above-noted proposal. The IAP is an initiative of the Ontario Securities Commission (OSC). Our mandate is to solicit and articulate the views of investors on investor protection issues and thereby ensure their concerns and voices are represented in the OSC's policy development and rulemaking process.

Below, we provide our responses to the questions you pose in your consultation paper.

### Responses to your questions:

1. *Are there other activities and/or services in the crypto-asset markets which Recommendation 1 should cover? If so, please explain.*

Answer: Recommendation 1 should additionally include custody / holding of crypto-assets and crypto derivatives.

2. *Do respondents agree that regulators should take an outcomes-focused approach (which may include economic outcomes and structures) when they consider applying existing regulatory frameworks to, or adopting new frameworks for, crypto-asset markets?*

Answer: Yes.

3. *Does Chapter 2 adequately identify the potential conflicts of interest that may arise through a CASP's activities? What are other potential conflicts of interest which should be covered?*

Answer: Chapter 2 does not mention conflicts of interest arising from trading of or investments in crypto derivatives or crypto ETFs. IOSCO should consider whether these types of transactions should be included.

4. *Do respondents agree that conflicts of interest should be addressed, whether through mitigation, separation of activities in separate entities, or prohibition of conflicts? If not, please explain. Are there other ways to address conflicts of interest of CASPs that are not identified?*

Answer: Yes, conflicts of interest should be addressed.

5. *Does Recommendation 3 sufficiently address the manner in which conflicts should be disclosed? If not, please explain.*

Answer: We believe the disclosure framework in Recommendation 3 is comprehensive.

6. *What effect would Recommendations 4 and 5 have on CASPs operating as trading intermediaries? Are there other alternatives that would address the issue of assuring that market participants and clients are treated fairly?*

Answer: In addition to the disclosure framework outlined in your recommendations, we believe that regulators should be required to conduct robust reviews and enforcement of CASPs' systems, policies and procedures for fair and expeditious execution of client orders to ensure compliance.

7. *Do respondents believe that CASPs should be able to engage in both roles (i.e. as a market operator and trading intermediary) without limitation? If yes, please explain how the conflicts can be effectively mitigated.*

Answer: In traditional financial markets, brokers may be permitted to internalize trades or act as principal but are not permitted to operate an exchange. A similar approach may be warranted for CASPs.

8. *Given many crypto-asset transactions occur "off-chain", how would respondents propose for CASPs to identify and disclose all pre- and post-trade "off-chain" transactions?*

Answer: CASPs that permit off-chain transactions should potentially be required to store off-chain transactions or disclose them on a publicly available ledger within a specified time frame. Another option would be to require CASPs to disclose off-chain transactions to regulators or depositaries to enable the latter to hold off-chain transactions in the event of any issues.

We recommend that IOSCO consult with industry stakeholders to better understand what is feasible.

9. *Will the proposed listing/delisting disclosures in Chapter 4 enable robust public disclosure about traded crypto-assets? Are there other mechanisms that respondents would suggest to assure sufficient public disclosure and avoid information asymmetry among market participants?*

Answer: Given that these assets can be global, there should be information exchanges between regulators so that participants in all markets have access to relevant information.

10. *Do respondents agree that there should be limitations, including prohibitions on CASPs listing and / or trading any crypto-assets in which they or their affiliates have a material interest? If not, please explain.*

Answer: Yes, there should be limitations. CASPs that trade their own tokens should potentially be required to disclose information such as volumes or sizes of trading, and should potentially be subject to a trading blackout period.

11. *In addition to the types of offences identified in Chapter 5, are there: a) other types of criminal or civil offences that should be specifically identified that are unique to crypto-asset markets, prevention of which would further limit market abuse behaviors and enhance integrity? b) any novel offences, or behaviors, specific to crypto-assets that are not present in traditional financial markets? If so, please explain.*

Answer: No comment at this time.

12. *Do the market surveillance requirements adequately address the identified market abuse risks? What additional measures may be needed to supplement Recommendation 9 to address any risks specific to crypto-asset market activities? Please consider both on- and off-chain transactions.*

Answer:

1. As a core principle, the Recommendations need to further outline requirements related to Customer Due Diligence, especially as it relates to AML and CFT.
2. Regulators should work closely with law enforcement to monitor transactions that access wallets suspected of being involved in illegal activities.
3. Consideration should be given to outlining proactive surveillance principles that ensure appropriate systems are in place to prevent issues before they spread across a firm or region.

13. *Which measures, or combination of measures, would be the most effective in supporting cross-border cooperation amongst authorities? What other measures should be considered that can strengthen cross-border co-operation?*

Answer: Given the global and cross-border nature of crypto-related crimes, it is urgent that IOSCO recommend measures that advance frameworks for cooperation. For example, consider opportunities to move beyond the MMOU and EMMOUs to foster the sharing of data across early detection surveillance systems among jurisdictions.

14. *Do the Recommendations in Chapter 7 provide for adequate protection of customer crypto-assets held in custody by a CASP? If not, what other measures should be considered?*

Answer: IOSCO does not prescribe specific expectations or thresholds regarding, for example, the holding of crypto-asset private keys in “hot” vs “cold” vs “warm” wallets. Outlining best practices or specific expectations around custody of crypto assets would provide valuable guidance for CASPs and general market participants.

15. *(a) Should the Recommendations in Chapter 7 address the manner in which the customer crypto-assets should be held? (b) How should the Recommendations in Chapter 7 address, in the context of custody of customer crypto-assets, new technological and other developments regarding safeguarding of customer crypto-assets? (c) What safeguards should a CASP put in place to ensure that they maintain accurate books and records of clients’ crypto-asset held in custody at all times, including information held both on and off-chain? (d) Should the Recommendations in Chapter 7 include a requirement for CASPs to have procedures in place for fair and reliable valuation of crypto-assets held in custody? If so, please explain why.*

Answer: In our view, the recommendations should address custodial requirements, as well as the maintenance of accurate books and records on a timely basis. A process for the fair and reliable valuation of crypto assets would be desirable.

16. *Should the Recommendations address particular safeguards that a CASP should put in place? If so, please provide examples.*

Answer: No comment at this time.

17. *Are there additional or unique technology/cyber/operational risks related to crypto-assets and the use of DLT which CASPs should take into account? If so, please explain.*

Answer: We recommend that IOSCO consult with industry stakeholders to better understand these risks.

18. *Are there particular ways that CASPs should evaluate these risks and communicate these risks to retail investors? If so, please explain.*

Answer: See the note below regarding the approach in the UK. We also recommend that IOSCO consult with stakeholders to better understand what would be feasible and helpful to retail investors.

19. *What other point of sale / distribution safeguards should be adopted when services are offered to retail investors?*

Answer: See the note below regarding the approach in the UK.

20. *Should regulators take steps to restrict advertisements and endorsements promoting crypto-assets? If so, what limitations should be considered?*

Answer: The UK has introduced rules that will come into effect in October, which will restrict the marketing of crypto assets under four categories. Promotions not made under the four categories will be in breach of the Financial Services and Markets Act 2000, which is a criminal offence punishable by up to two years imprisonment, the imposition of a fine or both.

The UK's rules classify crypto-assets as Restricted Mass Market Investments — a classification that allows them to be mass marketed to UK consumers subject to certain restrictions. In addition to the overarching requirement that financial promotions must be fair, clear and not misleading, the restrictions include: clear risk warnings, banning incentives to invest, positive frictions, client categorisation requirements and appropriateness assessments.

We recommend that IOSCO endorse the UK's rules in order to have them adopted by more regulators globally.

21. *Are there additional features of stablecoins which should be considered under Chapter 10? If so, please explain.*

Answer: No comment at this time.

22. *IOSCO also welcomes views from stakeholders on potential additional issues for consideration.*

Answer: No comment at this time.

Again, thank you for providing us with the opportunity to participate in this consultation.

Regards,

A handwritten signature in black ink, appearing to read 'Ilana Singer', with a stylized, cursive script.

Ilana Singer  
Chair, Investor Advisory Panel