



2 August 2023

By email

Dear Sir/Madam

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

AFMA welcomes the opportunity to comment on IOSCO's *Policy Recommendations for Crypto and Digital Asset Markets - Consultation Report* (the Report).

At a high level AFMA strongly supports the strategic direction for policy making in relation to crypto and digital asset markets suggested in the Report.

The risks of crypto and digital assets mirror those of traditional finance and should be managed with the same or similar regulatory frameworks both to protect investors and reduce the potential for regulatory arbitrage and an uneven playing field.

AFMA supports the principles-based and outcomes-focused approach proposed by IOSCO as most likely to result in responsive and flexible regulatory frameworks in member jurisdictions.

We have provided brief answers to the consultation questions following this letter.

Yours sincerely

Damian Jeffree  
**Senior Director of Policy**

## Chapter 1 – Overarching Recommendation Addressed to All Regulators

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

AFMA is not currently aware of additional activities and/or services in the crypto-asset markets that should be covered at this time.

Question 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?

AFMA agrees that the regulators should take an outcomes-focused approach that looks through the particulars of technical implementation (except where appropriate) when considering whether to apply existing regulatory frameworks or adopt new frameworks for crypto-asset markets.

AFMA suggests that currently licenced providers should, where possible and appropriate, be allowed to utilise existing licences for the provision of crypto-related services rather than requiring re-licencing where existing regulatory frameworks are not applied.

## Chapter 2: Recommendations on Governance and Disclosure of Conflicts

Question 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?

AFMA agrees with IOSCO's assessment that the use of the term 'exchanges' can be misleading. While 'exchange' can be a reasonably generic word, where it is used for crypto products that are substitutes for financial products or services we suggest regulations should ensure it is only used by licenced market operators.

Where CASPs operate blockchain infrastructure or otherwise have access to technology or data that may allow them to have advanced knowledge of client activities these conflicts should also be managed.

Question 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?

We agree the proposed approach.

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

Recommendation 3 provides a good baseline that regulators may find benefit in building on for particular products and services.

Chapter 3 – Recommendations on Order Handling and Trade Disclosures  
(Trading Intermediaries vs Market Operators)

Question 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?

AFMA agrees with most of the assessment in Chapter 3 and shares most of the concerns raised around disclosure and the potential for front-running and information asymmetry.

However, as a general principle we note this line: “Clients may not understand that the CASP is trading against them and therefore is not acting in their best interests” does not logically follow. Where a market-maker trades provides prices to trade against this can very well be in the client’s best interests.

AFMA supports the proposed requirements listed on page 20 including the pre- and post-trade disclosure requirements in Recommendation 5.

Question 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.

AFMA supports the separation of these roles in the same way as required under more traditional market operator/market participant arrangements. The conflicts of being both a full market operator and participant may be too great to be effectively managed in a single entity. This should not exclude dark pool operation.

Question 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?

AFMA does not have particular views on how this should be achieved, but outcomes should be similar for investors and all relevant risks.

Chapter 4 – Recommendations in Relation to Listing of Crypto-Assets and Certain Primary Market Activities

Question 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?

These disclosures will be of assistance. We note that the operational disclosures may become quickly out of date and difficult to know with certainty given the changeable and distributed nature of many implementations. Measures should be considered to manage these aspects of crypto assets and digital products.

Question 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.

AFMA is of the view that restrictions may be appropriate where conflicts cannot be appropriately managed. We suggest looking at the requirements around issuer trading of OTC products as a guide to how conflicts should be managed.

#### Chapter 5 – Recommendations to Address Abusive Behaviors

Question 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.

None raised at this time.

Question 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.

We note that verification of distributed systems particularly where nodes are in other jurisdictions will be a significant challenge.

#### Chapter 6 – Recommendation on Cross-Border Cooperation

Question 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?

We see the IOSCO list as a sensible starting position that can be developed over time. AFMA is supportive of cross-border cooperation amongst authorities to enhance the supervision of crypto-asset activities. To be effective, there must be a consistent approach to regulation across jurisdictions to ensure “same activities, same risks, same regulatory outcomes” while recognising that crypto-assets exist and are transacted on borderless networks. Jurisdictional consistency will allow for the true efficiency of borderless transactions to be realised.

#### Chapter 7 – Recommendations on Custody of Client Monies and Assets

Question 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?

We support IOSCO's avoidance of technical solution recommendations, the requirement for trust structures around client assets, disclosure, reconciliation and independent audit arrangements, requirements around ensuring security. These mirror existing approaches in standard custody arrangements.

Question 15: –

- (a) Should the Recommendations in Chapter 7 address the manner in which the customer crypto-assets should be held?

We support a principles-based approach rather than specifying certain technical solutions such as cold wallets.

- (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?

Regulators should keep a watching brief on developments and emerging risks in this new space.

- (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?

CASPs should be subject to similar books and records requirements to existing custodians of traditional assets.

- (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.

Valuation of crypto-assets can be difficult where there is no inherent value only market value. Valuations should be undertaken where possible and reasonable.

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

At the IOSCO level particular recommendations might not be appropriate. However, regulators might be encouraged to reference internationally accepted information security standards such as NIST.

Chapter 8 – Recommendation to Address Operational and

Question 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.

The Consultation Paper addresses the main additional risks. Key amongst these is unknown persons being responsible for the implementation of the underlying infrastructure, and the potential for code vulnerabilities.

#### Technological Risks

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

For retail investors risks should be clearly explained in straightforward language. Independent evaluation of risks could assist ensuring information provided about crypto products is accurate.

#### Chapter 9 – Recommendation for Retail Distribution

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

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

Similar requirements to those for traditional finance products should apply including target market determinations and suitability requirements where these exist for traditional finance products.

#### Chapter 10 –Stablecoins

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

Given the increased potential for systemic impacts of stable coins the highest standards of assurance and disclosure should apply.

Independent assessments and audits of the quality of claimed backing should be required.

#### Additional issues

Question 22: – IOSCO also welcomes views from stakeholders on potential additional issues for consideration.

None at this time.