

IOSCO Policy Recommendations for Crypto and Digital Asset Markets (including DeFi)

Umbrella Note



OICU-IOSCO

**THE BOARD
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Foreword

The International Organization of Securities Commissions (IOSCO) has published this Umbrella Note upon finalization of the two sets of IOSCO’s policy recommendations to address market integrity and investor protection issues in Crypto and Digital Asset (CDA) Markets, including Decentralized Finance (DeFi) (hereafter, Crypto Asset Markets).

In line with IOSCO’s established approach for securities regulation, the policy recommendations are addressed to IOSCO member jurisdictions. One of IOSCO’s goals is to promote greater consistency with respect to how IOSCO members approach the regulation and oversight of product, services and activities in Crypto Asset Markets, given the cross-border nature of the activities, the risks of regulatory arbitrage and the significant risk of harm to which retail investors continue to be exposed. IOSCO is also seeking to encourage consistency in the way Crypto-Asset Markets and traditional financial markets are regulated within individual IOSCO jurisdictions, in accordance with the principle of “same activities, same risks, same regulation/regulatory outcomes”.

While the Recommendations are not directly addressed to market participants, all participants in the Crypto Asset Markets are strongly encouraged to carefully consider the expectations and outcomes articulated through the Recommendations and the respective supporting guidance in the conduct of their activities including registered/licensed, and cross-border activities.



Background / Overview

IOSCO published its [Policy Recommendations for Crypto and Digital Asset Markets](#) (CDA Recommendations) on November 16, 2023. Today, IOSCO has published its [Policy Recommendations for Decentralized Finance](#) (DeFi Recommendations).

These two sets of complementary policy recommendations (together the Recommendations) are designed to support greater consistency with respect to regulatory frameworks and oversight in IOSCO member jurisdictions, to address market integrity and investor protection risks identified in the Crypto-Asset Markets.

In finalizing these Recommendations, IOSCO has established a global regulatory policy framework for the regulation of the Crypto Asset Markets in accordance with IOSCO's Crypto-Asset Roadmap 2022/2023¹ published in July 2022.²

Purpose of the Umbrella Note

The purpose of this Umbrella Note is to explain the interoperability between the two sets of Recommendations.

The Recommendations are principles-based and outcomes-focused. They apply IOSCO's widely accepted global standards for financial markets regulation to address key issues and risks identified in the Crypto-Asset Markets. The Recommendations are activities-based and follow a 'lifecycle' approach in addressing the key risks identified.

In line with IOSCO's established approach for financial market regulation, the Recommendations are addressed to relevant authorities. They look to support IOSCO members seeking to regulate the offer of Crypto-Asset Markets products, services, activities, and arrangements, occurring or located within their jurisdiction. As clearly set out in Recommendation 1 of the CDA Recommendations, the objective is to apply existing or new jurisdictional frameworks in the most

¹ [IOSCO Crypto-Asset Roadmap 2022/2023, July 2022](#)

² The Recommendations have been developed under the stewardship of the IOSCO Board's Fintech Task Force (FTF)



effective way possible to the offer of Crypto-Asset Markets products, services, and activities to the extent that (1) they are, or behave like substitutes for securities and other regulated financial instruments and investment activities, and (2) investors have substituted securities and other financial instruments and investment activities with Crypto-Asset Market investment products, arrangements, and investment activities.

Accordingly, both sets of Recommendations are focused on the economic substance and the substitutability of the products offered, services provided, and activities engaged in, vis-à-vis traditional financial instruments (notwithstanding a crypto-asset's purported potential use case or purpose as stated in supporting marketing and/or distribution materials). This in line with the guiding principle of "same activity, same risk, same regulation/regulatory outcome."

The Substance of the Recommendations

CDA Recommendations

The CDA Recommendations are aimed at the centralized activities performed by crypto-asset service providers (CASPs). The 18 recommendations cover the range of activities in crypto-asset markets, and they can be grouped into six key areas: (1) Conflicts of interest arising from vertical integration of activities and functions, (2) Market manipulation, insider trading and fraud, (3) Custody and client asset protection, (4) Cross-border risks and regulatory cooperation, (5) Operational and technological risk, and (6) Retail distribution.

DeFi Recommendations

The DeFi Recommendations' primary focus is on products, services, activities, and arrangements that self-identify, or have been identified by a regulator, as "decentralized." The nine recommendations cover six key areas: (1) Understanding DeFi arrangements, (2) Achieving common standards of regulatory outcomes, (3) Identification and management of key risks (4) Clear, accurate and comprehensive disclosures (5) Enforcing of applicable laws, and (6) Cross-Border Cooperation.

Interoperability between the CDA and DeFi Recommendations

CASPs are service providers that conduct a wide range of activities relating to crypto-assets,³ including but not limited to, admission to trading, trading (as agent or principal), operating a market, custody, and other activities such as services relating to lending/staking of crypto-assets and the promotion and distribution of crypto-assets on behalf of others.

CASPs can exist as centralized crypto-asset service providers, which operate under traditional corporate forms, and they can also exist in DeFi, where these activities can be performed without involvement of traditional corporate forms.

In Crypto-Asset Markets, along a spectrum of arrangements, persons and entities typically engage in financial activities that substantially mirror traditional financial activities. They do so using a number of technologies including, to varying degrees, distributed ledger technology (DLT). Regardless of the organizational form, or technologies used, the persons and entities engaging in these activities should be treated in line with the guiding principle of “same activity, same risk, same regulation/regulatory outcome.”

IOSCO recognizes that regulatory touchpoints are readily identifiable where persons and entities are organized in traditional corporate forms. However, as noted in the DeFi Recommendations, persons and entities who provide DeFi products and services attempt to arrange and distribute their operations may outside of traditional corporate forms. In certain instances, it may be challenging to identify regulatory touchpoints to which regulatory obligations may be applied.

The DeFi Recommendations are intended to foster a deeper understanding of the DeFi market as currently operating to assist regulators with their efforts to deliver investor protection and market integrity regulatory outcomes.

³ The term “crypto-asset,” also sometimes called a “digital asset,” refers to an asset that is issued and/or transferred using DLT, including, but not limited to, so-called “virtual currencies,” “coins,” and “tokens.” To the extent digital assets rely on cryptographic protocols, these types of assets are commonly referred to as “crypto-assets.”

The DeFi Recommendations should be applied to a particular arrangement if it identifies itself and/or is identified by a regulator as “decentralized.” The DeFi Recommendations provide a diagnostic (i.e., understanding the facts and circumstances of an activity) and prognostic (i.e., understanding the investor risks and market risks posed by the activity) approach to examining and assessing DeFi arrangements, such that for a particular activity and its risks. Regulators should be guided by the overarching principle of “same activity, same risk, same regulation/regulatory outcome.”

To the extent a regulator, applying the recommendations, determines that a particular DeFi arrangement, or a part of that arrangement, is conducted by a CASP, the CDA Recommendations will apply.

Thus, whatever form or organization the CASP takes, if a person or entity is a CASP in a particular jurisdiction, the CDA Recommendations will also apply to the CASP. In this regard, **the flow chart below illustrates the interoperability of the CDA Report and this DeFi report:**





Market participants are strongly encouraged to carefully consider the expectations and outcomes articulated through the Recommendations and the respective supporting guidance.

Next Steps

With delivery of these Recommendations, IOSCO is now shifting attention towards implementation monitoring, capacity building and technical assistance needs of its members.

As the recognized international standard setting body for securities markets regulation – developing, implementing and promoting adherence to internationally recognized standards for capital markets – IOSCO is uniquely placed to tackle the cross-border challenges associated with Crypto-Asset Markets, as a truly global body with over 130 authorities who together regulate more than 95% of financial markets.

IOSCO will continue to encourage dialogue within member jurisdictions to focus on the issues raised by our policy recommendations and work on steps forward, appropriate to each jurisdiction.

IOSCO must now focus its efforts to promote, support, monitor and assess adoption and implementation of effective regulatory regimes for crypto-assets across IOSCO member jurisdictions.