coinbase

To:

Dubai Financial Services Authority
Level 13, The Gate, DIFC
P.O. Box 75850

Date:

20 May 2022

Re: CP 143, Regulation of Crypto Tokens

Coinbase Global, Inc. welcomes the opportunity to comment on Consultation Paper No. 143, Regulation of Crypto Tokens (**CP**).

We appreciate the thoughtful efforts of the Dubai Financial Services Authority (**DFSA**) to develop a regulatory framework for crypto assets, and we look forward to continued engagement.

Sincerely,

Faryar Shirzad
Chief Policy Officer
Coinbase Global, Inc.

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Q1. Do you agree with the proposed definition of a Crypto Token set out in paragraph 18? If not, why not?

Coinbase response: Yes

The Consultation Paper (**CP**) proposes the following definition of 'Crypto Token':

A Crypto Token is a Token that is used, or is intended to be used, as a medium of exchange or for payment or investment purposes but excludes an Investment Token, or any other type of Investment, or an Excluded Token. A Crypto Token includes a right or interest in the relevant Crypto Token.

Generally, the broad definition of 'Crypto Token' would appear appropriate as a counterpart to the concept of 'Investment Token' under the existing regulatory framework.

However, we note that this definition does not differentiate between stablecoins and crypto assets such as Bitcoin, which diverges from approaches taken by other international regulators. The UK, for example, is intending to subject stablecoins to a less onerous regime than crypto assets as they are designed to be used for payments rather than investments. Furthermore, the CP proposes to exclude Central Bank Digital Currencies (**CDBCs**) from the DFSA regulatory framework, which are akin to stablecoins in nature. We therefore propose to exclude payment tokens from the proposed definition of "Crypto Token," where a payment token has the defining characteristic of being stabilized by reference to one or more fiat currencies and/or is issued and used as a means of making payment transactions. In addition, please note our concerns with respect to the list of Prohibited Tokens and the concept of Accepted Crypto Tokens set out in our responses to Q4 and Q5.

Q2. Do you agree with our proposal to exclude NFTs, Utility Tokens and CBDCs from regulation? If not, why not?

Coinbase response: Yes

We understand the proposed list of Excluded Tokens to mean that such tokens (i.e. Utility Tokens, NFTs and Central Bank Digital Currencies) are outside the scope of the DFSA's regulatory framework and, therefore, activities in relation to such Excluded Tokens can be conducted in or from the DIFC without the need to obtain a license.

We support the views expressed on these tokens in the CP. The view that NFTs are not financial instruments and therefore that activities in relation to them are not financial services is particularly welcome. There are many potential uses for NFTs and it is appropriate that the DFSA does not categorize them as financial instruments.

Similarly, Utility Tokens have a function which is unrelated to financial services altogether

and, therefore, we agree with the exclusion of Utility Tokens from the regulatory framework. However, we would caution against reclassification of any Utility Token which develops secondary trading markets and/or use cases beyond the issuer's platform or that of their group. These developments should not affect the classification of the underlying asset and, in fact, there are numerous examples of assets for which there are secondary markets but which are unrelated to financial services. For example, if you buy or rent/lease a property or a car, the mere existence of a secondary market for the asset you acquired to be on-sold does not suggest that the underlying asset is a financial product.

Finally, given that Central Bank Digital Currencies are likely to already be subject to regulatory oversight by the central banks in the same way as fiat currency, excluding such tokens from the DFSA's regulatory framework is welcome to avoid the risk of concurrent application of potentially conflicting regulatory requirements and double regulation.

Q3. Do you think that NFT creators and service providers should be designated as DNFBPs in the DIFC?

Coinbase response: No

We do not support the proposal to introduce AML requirements for NFT marketplaces at this time. To the extent that AML requirements are introduced for NFTs in the DIFC, we suggest that this should be subject to a *de minimis* value threshold. For example, for art market participants under the UK money laundering regulations, there is a *de minimis* threshold value of EUR 10,000 for the application of AML requirements.

Q4. Do you agree with our proposals to ban Privacy Tokens and Devices, and Algorithmic Tokens as Prohibited Tokens? If not, why not?

Coinbase response:

We are not opposed to the DFSA's proposal to ban Privacy Tokens with enforced privacy features (such as Monero) as Prohibited Tokens. However, we suggest permitting activities in relation to Privacy Tokens that contain elective privacy features (such as Zcash and Dash) provided that: (i) transactions involving those tokens must not have the elective privacy features enabled; and (ii) exchanges and other platforms must retain the ability to conduct on-chain transaction monitoring (either by bespoke or third party software).

Regarding Algorithmic Tokens, we note that their objective – to achieve price stability through balancing the circulation of supply – does not appear to be, in and of itself, an

area of concern to the DFSA (which is also the view of other regulators internationally, such as the UK's FCA which has opted to keep such tokens outside the regulatory perimeter for the time being). Rather, the mechanism by which this objective is achieved gives rise to the concerns identified in the CP. This is a developing area and new technology may emerge over time which can address those concerns through different mechanisms. Accordingly, we suggest that Algorithmic Tokens not be made Prohibited Tokens but that the DFSA continue to monitor their development over time.

Q5. Do you agree with our proposals to introduce an Accepted Crypto Token regime? If not, why not?

Coinbase response: No

We regard the proposal in paragraph 55 to be particularly problematic and we believe that it would effectively make the business models of most crypto firms not viable. The DFSA is proposing the following items, each of which will be addressed in turn.

Introduce an Accepted Crypto Token approach as set out in paragraph 47

The requirement to obtain an approval as an Accepted Crypto Token before being able to engage in activities in relation to it is not workable in practice and incompatible with the nature of the industry. Furthermore, it would be administratively burdensome for the DFSA to approve tokens when they are changing all the time. It would be more practical and efficient to put the onus on the firms themselves to maintain compliance, with perhaps a high-level review and approval of firms' processes for assessing tokens. Coinbase runs a robust process for reviews of tokens prior to listing and we would be happy to talk the DFSA through this process if it would be helpful.

The administrative burdens and necessary delays caused by an approval process are in tension with the fast-moving nature of the crypto ecosystem. By the time DFSA licensed firms could engage in activities in relation to a newly launched token, opportunities may already have been taken up by market participants in other jurisdictions who are not subject to equivalent restrictions. This could put DFSA licensed firms at a competitive disadvantage compared to their international counterparts and ultimately discourage them from performing activities from the DIFC.

Furthermore, some viable and beneficial business models for the industry would not appear to be workable from the DIFC if only Accepted Crypto Tokens could be used. For example, market makers play an important role in allowing newly launched tokens to achieve sufficient liquidity at their inception. However, market makers may not be able to engage in these activities with respect to a token until the token has already achieved a certain maturity to comply with suggested principle (b) for approval. This may cause a

'chicken and egg' problem, where a token cannot meet the criteria for approval in order for market makers to help improve its liquidity because it does not have an existing track record. This would not be a desirable outcome for the issuer, the market maker or any other parties who would have benefited from greater choice in the token market had the token been successfully launched.

Adopt an Accepted Crypto Token approval process as set out in paragraphs 50 to 53

The proposed approval process for tokens is overly burdensome and likely to take an unduly long period of time. The combination of the administrative burden to an Exchange or a Multilateral Trading Facility or the issuer/creator of the Crypto Token and the delays in allowing activities in relation to new Crypto Tokens as they develop is in tension with the fast-paced nature of the crypto market. At launch, it may be difficult for the relevant party to collect data on the token so as to provide information on the various granular factors requested by the DFSA. By the time the approval process, including the waiting period is complete, relevant opportunities in relation to the new token may already be taken by competitors operating from other jurisdictions.

If the DFSA rejects an application, it would give the applicant an opportunity to make representations, but there would be no right of appeal from the DFSA's decision. Therefore, if a new Crypto Token is rejected early on during its launch, potentially due to a lack of data available at that time, this could make it more difficult for the token to obtain approval at a later stage when more data is available.

Further, given that an Exchange, a Multilateral Trading Facility or the issuer/creator of a token can make an initial application, it might work to the detriment of the token if the first mover on the application does not submit a good quality application for whatever reason. For example, an Exchange might make the initial application which leads to the token being rejected without appeal. The current proposal may leave the issuer of the token, who may be the primary interest holder in many cases, without recourse to reopen the application.

Require Authorised Persons to notify the DFSA if they become aware of significant developments that may result in the Crypto Token no longer qualifying as an Accepted Crypto Token

If this proposal is retained, it should be made clear that Authorised Persons are only required to notify the DFSA of changes: (1) of which they have actual knowledge; and (2) if they are aware that those facts would have a material impact on the DFSA's assessment of the token. It is important not to impose a disproportionate burden on Authorised Persons to proactively monitor the status of potentially numerous Accepted Crypto Tokens on an ongoing basis and in the light of a variety of factors which may be relevant.

Revoke Accepted Crypto Token status if we reasonably believe that, having regard to

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the listed criteria, the Token is no longer suitable for use

The fact that Accepted Crypto Token status may at any time be rescinded for any particular token may make market participants based in the DIFC less likely to engage in activities in relation to a token. In the worst case scenario, market participants may be subject to greater business risk and losses if they have to exit investments at a time that is suboptimal as a result of a change in status of a token. Crypto Tokens have traditionally been volatile by nature and holding tokens through market downturns has often proven to be the right strategy long term. However, the factors under (b) of the principles in particular may lead to a conclusion that a token would lose its Accepted Crypto Token status during such a period. Moreover, market participants who have hedged their exposure to a token which loses its Accepted Crypto Token status may find themselves exposed to risks if one leg of a hedging transaction were to fall away or be disrupted.

It may also be more difficult for products and services of DFSA Authorised Persons to be priced competitively if they have to account for the additional risk of a token's potential loss of Accepted Crypto Token status. These considerations could make the DIFC a less attractive jurisdiction for market participants to operate in.

Q6. Do you agree with our proposal to apply the Financial Promotions requirements in GEN 3 to all activities related to the marketing of Crypto Tokens and expand the definition of a Financial Product to include a Crypto Token? If not, why not?

Coinbase response: Yes

We agree in principle with this proposal to apply the Financial Promotions requirements in GEN 3 to all activities related to the marketing of Crypto Tokens and expand the definition of a Financial Product to include a Crypto Token. We consider that consumer protection principles should be core to regulatory frameworks but should not be used as a means to indirectly curtail digital asset activity. We understand that the intent of the DFSA's proposal is to set reasonable requirements regarding the content of financial promotions relating to Crypto Tokens, without creating excessive barriers.

Q7. Do you agree with our proposal to require those seeking to provide Financial Services in relation to Accepted Crypto Tokens to establish as Body Corporates and be incorporated under DIFC Law? If not, why not?

Coinbase response: No

The proposal to allow only subsidiaries of foreign financial institutions (i.e., no branches or Representative Offices) to offer Financial Services in relation to Accepted Crypto Tokens

in or from the DIFC would be a significant barrier to entry for a large number of market participants. Such a requirement may lead many of them to choose not to engage in activities from the DIFC.

Such a restrictive approach is likely to impact both potential new applicants considering obtaining a license from the DFSA as well as existing license holders seeking a variation of their license to include activities in relation to Crypto Tokens going forward. Where an existing license holder currently operates through a branch, the likely unintended result of the proposal would be that, in practice, a variation of this Authorised Person's license would not be possible at all. Instead, this Authorised Person would need to incorporate a new group entity in the DIFC in addition to the existing branch, and this new entity would have to start a new licensing process independently.

While we note the concern being raised that many service providers are not currently subject to regulation, are subject to light touch regulation, or are subject to AML/CFT regulation only, we believe that this in any event does not warrant a blanket ban on branching into the DIFC, especially where the relevant branch is of an entity which is subject to equivalent regulatory oversight by a robust regulator in its home jurisdiction. At the very least, the Recognised Jurisdiction list published by the DFSA should be applied so as to allow branching in from the Jurisdictions covered on that list.

Q8. Do you agree with our proposals concerning the provision of Financial Services in relation to Crypto Tokens? If not, why not?

Coinbase response: Yes but only in relation to the first subsection below

The DFSA is proposing the following items, each of which will be addressed below in turn:

Allow the Financial Services listed in paragraph 62 to be provided in relation to Crypto Tokens

Generally, it appears to be workable to apply the existing framework of regulated Financial Services to Crypto Tokens. However, please note the comments on the regulated activities of Operating a Representative Office and Providing Money Services below.

Not allow Operators of Crowdfunding Platforms to use Crypto Tokens in the provision of products or services

N/A

Not permit any Representative Offices to market activities related to Crypto Tokens

We do not support the proposed prohibition on Representative Offices promoting Crypto

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Token-related products or services. In particular, for such a far reaching restriction, the reasoning given in the CP is very limited and stated as the following:

"*This is due to the online nature of these products and services and the inability to understand exactly where that product or service is being provided.*"

Most products, in any industry, would have significant difficulty functioning without an online element. Businesses, both new and traditional, all have global reach through online channels. The challenge highlighted by the DFSA (i) is not specific to Crypto Tokens and (ii) needs to be managed by businesses across industries to comply with their various regulatory requirements on an everyday basis. Without more substantiated reasoning as to why this will not be possible to achieve for crypto businesses, we regard the proposed restriction as disproportionate.

Representative Offices are used very effectively in the DIFC by many businesses which provide their core regulated activities elsewhere and which are subject to robust regulatory oversight by a home regulator. This enables those businesses to have a presence in the DIFC and engage in dialogue with the DFSA. Not allowing Representative Offices altogether is in practice unlikely to make all cross-border activity of such market participants disappear, however, the element of ongoing dialogue with the DFSA would be lost.

Not allow any Money Service Providers to provide services in relation to Crypto Tokens, other than to allow them to use DLT and native Tokens within the limitations in paragraphs 74 & 75

This proposal is too restrictive and we believe that it would prevent the development of new business models by DIFC firms for which there is a good use case and a nascent industry in the DIFC. This would make it more difficult for the DIFC to position itself as a leading jurisdiction in this space.

Firms that are looking to bring their existing business models to the DIFC may be discouraged from doing so if they cannot provide their full offerings. Aside from making the value proposition less desirable, it also may not be possible to extract from existing service offerings only those functionalities which touch upon the DIFC. A consideration of these factors as a whole may lead industry participants to decide not to set up in the DIFC altogether.

Finally, the proposal to allow use of the blockchain (and associated native Tokens required to operate on the blockchain) for the limited purpose of enabling back-office operations does not have our support, as all service offerings that rely on the use of blockchain in customer-facing operations would continue to be excluded.

Not allow any Authorised Person to provide services in relation to both Crypto Tokens

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and Excluded Tokens. However, we seek views on whether a licenced Custodian should be exempted from this proposal.

This proposal is too restrictive. We appreciate the DFSA's recognition that Excluded Tokens perform a valuable role in the ecosystem and should not be regarded as inherently harmful. Nonetheless, in view of the policy underlying this exclusion, it seems inconsistent to hamper the development of Excluded Tokens by preventing Authorised Persons from providing services relating to such tokens. Firms may not find it economically viable to set up a separate legal entity to serve Excluded Tokens. Therefore, the result may be that Excluded Tokens end up in a similar position to Prohibited Tokens, which we do not believe was the intention behind the CP.

Finally, it is attractive to users to be able to access services for both Crypto Tokens and Excluded Tokens within the same application or service offering. The CP reasons that its proposal would avoid confusion. But this concern appears to be theoretical and could be addressed in a more proportionate manner than an outright ban, such as by requiring relevant disclosures and warnings.

Q9. Should Custodians be allowed to provide services in relation to both Accepted Crypto Tokens and Excluded Tokens? If not, why not?

Coinbase response: Yes

Yes, we believe this should be possible for the same reasons outlined under the final section of Q8 above. In particular, it appears inappropriate that an entity, by obtaining a license from the DFSA and therefore subjecting itself to regulatory oversight, should lose the ability to provide services in relation to tokens that have been found not to come within the scope of the regulatory framework, nor to have the same potential for harm as Prohibited Tokens. Furthermore, it is not evident how users would be put at risk by allowing them also to have Excluded Tokens under custody by a trustworthy regulated entity (even if the regulatory oversight does not extend to these tokens themselves). It is also unclear how requiring users to go to a third party that is not subject to the same level of regulatory oversight for these services would provide any benefit.

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Q10. Do you agree with the proposal to extend the current regime for the trading and clearing of Investments and Investment Tokens to the trading of Crypto Tokens but subject to certain limitations? If not, why not?

Coinbase response: No (although Coinbase is not opposed to certain restrictions as discussed in the fourth subsection below).

The DFSA is proposing to extend the current regime for trading and clearing of Investments and Investment Tokens to allow for the trading of Crypto Tokens with the following limitations:

Trading of Crypto Tokens may not take place on an OTF

We understand that, in contrast to multilateral trading facilities, the operator of an OTF exercises discretion in the order matching process. If the DFSA considers limiting OTF-style arrangements, it should accurately and narrowly define such arrangements so as to (i) make very clear how existing crypto exchange structures are to be categorised under the DIFC rules, and (ii) ensure that a prohibition of this nature does not capture typical crypto exchange business models.

Trading on own account by the operator of the market is prohibited on that venue

In our view, a blanket prohibition as proposed would be too strict. As a matter of principle, an operator of an order matching platform should not also be engaged in proprietary trading that positions itself against its clients, and we would support a restriction on that activity. The proposal, however, goes farther than that and fails to recognize the instances in which an operator may have a legitimate need to trade on its platform. For example, to ensure liquidity in periods of extreme high latency, or in the case of system outages, such activity may be necessary to support orderly trading. Rather than a prohibition, the DFSA should consider specifying limitations on the amount of trading as well as requirements for disclosure, so that any such activity is limited to what is necessary to maintain a fair and orderly market.

The ITL cannot be used for trading activity in Crypto Tokens

N/A

An operator may not combine the trading of Crypto Token and Investment (Token) within the same legal entity structure (unless proper arrangements are in place)

Coinbase response:

We are not generally opposed to putting in place certain structural safeguards where trading of Crypto Tokens and Investment Tokens is combined in the same legal entity. However, these should be discussed bilaterally and applied in a proportionate manner focused on the specific risks identified for the business model of the relevant operator.

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Q11. Do you agree with our proposed clearing and settlement requirements for operators of trading venues and with our proposal to accept Crypto Tokens as money settlement instruments? If not, why, and what alternative would you suggest?

Coinbase response:

The DFSA is proposing the following items, each of which will be addressed below in turn:

Operators of a trading venue have an option to demonstrate the appropriateness of their clearing and settlement arrangements through involvement of a CCP, or use of technology excellence that removes settlement and counterparty risk from the system

We agree with this approach insofar as it signals the DFSA's openness to continued engagement with the potential for new technologies to reduce risk and improve clearing and settlement processes. DLT has the potential to substantially improve clearing and settlement as compared to the traditional financial system.

Currently, even centralised crypto platforms primarily use off-chain ledger settlement systems to settle exchange transactions, as this mitigates the issues with scaling and fees associated with on-chain settlement (although we note that settlement risk can be mitigated through a requirement that all trades are pre-funded). However, a range of technological solutions have been and continue to be explored, involving both central counterparties and blockchain-based settlement processes. Key efficiencies are derived from having the same entity provide both exchange/trading and clearing and settlement services.

We agree with the DFSA that the extent to which a particular solution addresses or minimises settlement and counterparty credit risk should be assessed on a case-by-case basis. Other jurisdictions have taken a similar approach; for example, the European Commission's Markets in Crypto Assets (MiCA) proposal does not prescribe a settlement process, but states that final settlement of a digital asset transaction should be completed on the same date that the transaction is executed.

Alternatively, the operator will be expected to have a clearing guarantee fund, the workings of which needs to be presented for the DFSA's approval (additional systems and controls will apply to minimise the risk of draw-down on the fund); and

N/A

Crypto Tokens accepted by the DFSA may be used as a money settlement instrument together with the traditional way of settling with fiat currencies.

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Coinbase response:

We agree that there should not be a restriction on using accepted Crypto Tokens to settle transactions.

Q12. Do you agree with the proposal to amend AMI 5.8 to accommodate the clearing of Crypto Tokens? If not, why not?

Coinbase response: Yes

We agree with the conclusion that there are no material differences, in terms of technology or governance, between clearing of Investment Tokens or Crypto Tokens. We welcome the proposal to extend the capacity of the existing AMI license for a Clearing House to clear trades not only in Investment Tokens, but also in Accepted Crypto Tokens.

Q13. Do you agree with our proposal to permit direct access members to trade on venues offering Accepted Crypto Tokens?

Coinbase response:

We agree with this proposal. Imposing an obligation on exchanges to have regulated members acting as intermediaries would be impractical.

Q14. Are there any other concerns which need to be addressed in permitting direct access members to trade on venues offering Accepted Crypto Tokens? What are these considerations, and how should they be addressed?

Coinbase response:

No

Q15. Do you agree with our proposals to require all operators of Crypto Token trading venues to implement technology governance requirements and to submit the results of annual technology audits to the DFSA? If not, why not?

Coinbase response:

No. Imposing such requirements would impose significant administrative and financial implementation costs which would not create a level playing field in a global market.

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Q16. Do you agree with our proposal to apply the Proper Markets requirements to venues that trade Accepted Crypto Tokens? If not, what practical issues do you foresee with such a proposal and what alternative would you suggest?

Coinbase response:

Yes, we generally agree with this proposal as long as it is implemented in a reasonable and practical way. We welcome dialogue between the DFSA and the market to discuss implementation in more detail.

Q17. Do you agree with our proposal to apply the requirements relating to Business and Operating Rules, subject to adaptations, to operators of trading venues where they allow direct access members? If not, why not?

Coinbase response:

N/A

Q18. Do you agree with the proposals to amend AMI 5.8 to accommodate the trading of Crypto Tokens and to not apply the Reporting Entity and Listing requirements in MKT? If not, why not, and what practical difficulties do you think would arise?

Coinbase response: Yes, but only in relation to not applying the requirements in MKT

The proposed amendments to the criteria set out in AMI 5.8 and COB 9.4 to allow for the trading of Crypto Tokens relate to the introduction of the approval criteria and process for the Accepted Token list. We have already outlined our concerns in relation to these proposals in the response to Q5 above.

We agree with the proposal not to apply the Reporting Entity and Listing requirements for Crypto Tokens, as they are not suitable to the nature of Crypto Tokens.

Q19. Do you agree with the proposals for on-going disclosures? If not, why not?

Coinbase response: No

It would be unworkable in practice for Coinbase to provide, for each coin on its exchange "the breakdown of largest holders in the Accepted Crypto Token across the native / largest blockchains (those holding 10% or more of total supply)." The pseudonymous data is available in the public domain (so the DFSA could use a blockchain explorer to see it) and Coinbase would not be able to de-anonymise it.

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Q20. Do you agree with the proposals in relation to collective investment funds? If not, why not?

Coinbase response:

N/A

Q21. Have you identified any practical difficulties in respect of the requirements relating to PIPs? If so, how could these be addressed?

Coinbase response:

N/A

Q22. Do you agree with the proposals to apply the same Digital Wallet Service Provider requirements to a Crypto Token business, to prohibit the use of Privacy Devices and to adopt additional measures when dealing with an Authorised Person safeguarding and administering Accepted Crypto Tokens? If not, why not?

Coinbase response:

The DFSA is proposing the following items, each of which is addressed in turn below:

Adopt the same requirements for Crypto Token business that we put in place for Digital Wallet Service Providers in CP138, as set out in COB 14.3 and AMI 5A.4

N/A

Prohibit the use of Privacy Devices

We agree with the proposal as it relates to Privacy Devices, including mixers or other mechanisms that are intended to hide, anonymise or prevent the tracing of Crypto Token holders and transactions.

Adopt additional requirements for the safeguarding and administration of Accepted Crypto Tokens

We believe that the proposed additional requirements are reasonable means to protect users.

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Q23. Do you have any views on potential regulation of DeFi activities? If so, what are they?

Coinbase response:

DeFi is still at an early stage. It is developing fast but it is not yet in a steady state that would enable regulators to appropriately assess and address risks without entrenching rules that would quickly be outstripped by the changing technology and market. In our view, the DFSA should continue monitoring this space but should not at this time impose regulatory intervention.

We would also propose to introduce a sandbox arrangement for DeFi projects seeking to launch new protocols or platforms. Such an arrangement could be popular and would allow the DFSA to learn how such projects operate through dialogue with creators and developers who are active in the space, with a view to understanding how best to regulate in the future (if at all).

Q24. Do you agree with the proposals to not allow firms in the DIFC to conduct yield farming or staking activities? If not, why not and what alternative would you suggest?

Coinbase response:

See our response to Q23 above. Similarly to the points noted there, we believe that any regulatory intervention with respect to yield farming and staking activities would still be premature at this stage.

Q25. Do you agree with our proposals in relation to the disclosures an Authorised Person and operator of a trading venue must issue in respect of Accepted Crypto Tokens? If not, why not?

Coinbase response: Yes

The proposed risk warnings appear to be a reasonable way of alerting users to the risks of crypto tokens, subject to the relevant whitepapers being readily available.

Q26. Do you agree with the proposals to allow Crypto Tokens to contribute to a net asset test and for the DFSA to monitor how knowledge and experience requirements in relation to Crypto Tokens are applied in practice? If not, why not?

Coinbase response:

The DFSA would invite comments, and views, on whether only Accepted Crypto Tokens should form part of a client's net assets (or also other Crypto Tokens), with an application

of a 80% haircut on the current valuation for the purposes of the Assessed Professional Client test.

There is not currently a limitation on the asset classes which are taken into account for the Assessed Professional Client test, so it does not appear reasonable for only certain Crypto Tokens to be excluded. Furthermore, there is currently no haircut that applies to other asset classes, such as securities, the value of which may also be subject to significant fluctuation. We therefore regard a haircut of 80% as disproportionate.

Q27. Do you agree with the proposals in relation to the Retail Client protections set out in paragraph 222? If not, why?

Coinbase response:

The DFSA is proposing the following items, each of which is addressed in turn below:

Invite views on the use of past performance information in any communication or marketing material aimed at Retail Clients

It is common for securities around the world to be promoted on the basis that "*past performance is no guarantee of future performance*" in their marketing materials.

Require certain firms referred to in paragraph 209 (Authorised Firms who are providing intermediated services, such as arrangers or dealers) to undertake an appropriateness assessment before allowing a Retail Client to transact with a Crypto Token

N/A

Invite views on whether other firms should be required to carry out an appropriateness assessment before allowing a Retail Client to transact with a Crypto Token

We are generally in favour of investor protections, however, we do not agree that existing suitability/appropriateness regimes for other forms of assets or investments should be applied in the same form to Crypto Tokens. We would encourage the DFSA to explore alternative means of establishing suitability/appropriateness in a Crypto Token context, for example requiring retail clients to complete online education or otherwise demonstrate experience and knowledge.

Prohibit the use of credit cards by Retail Clients to fund their account both in spot and Derivative trading

N/A

Restrict leverage offered to Retail Clients in relation to Crypto Token Derivatives as per paragraph 216 (2:1)

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This proposal appears generally reasonable and fits with ESMA's approach in the EU. However, we note that overly restrictive leverage ratios may lead consumers to use offshore platforms (which offer high leverage), and we therefore suggest that a balance needs to be struck in this regard.

Prohibit the offering of any incentives, including bonuses, rewards or gifts to Retail Clients by any Authorised Person in respect of any Crypto Token Business

Such a prohibition would be overly restrictive on trading activity and very broad. We would instead suggest putting more emphasis on education that enables users to engage more effectively and safely with crypto, and which we think is much more effective than generic warnings.

Q28. Should we provide further guidance in respect to what we consider is "fair and balanced" in respect of past performance information in any communication or marketing material aimed at Retail Clients, if yes, why?

Coinbase response: Yes

We agree that further guidance should be provided. We note the DFSA's view that past performance figures may not provide a fair and balanced view and its reference to Bitcoin prices over different periods of time to illustrate this. It would be helpful for market participants to understand from DFSA how past performance can be shown in a way that it considers to be fair and balanced.

Q29. Do you agree with the proposal to require a Custodian providing Crypto Token custody services to have a base capital of USD 1 million? If not, why not?

Coinbase response: Yes, to an extent

We agree with the proposal to require Custodians providing Crypto Token custody services to maintain a certain level of base capital. However, we suggest that USD 1 million may be excessive when compared with the requirements of other regimes. For example, the draft EU Markets in Crypto-assets Regulation ("MiCA") proposes a minimum base capital requirement of between €50,000 and €150,000 (depending on the nature of the digital asset services provided) plus one quarter of the firm's fixed overhead costs over the preceding year and insurance coverage requirements for specified categories of risks.

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Q30. Do you agree with our proposals to add AML/CTF requirements to Authorised Firms and to remind all Authorised Persons to follow developments at a Federal Level and the FATF Recommendations and Standards? If not, why not?

Coinbase response: Yes

We agree with the proposal to impose both AML/CFT and sanctions compliance requirements upon Authorised Firms. We also welcome guidance from the DFSA to facilitate firms' compliance.

Q31. Do you agree with our proposals to apply Market Abuse provisions to operators of AMIs and MTFs trading Crypto Tokens and to require any such entities providing forums to monitor these forums and remove any posts that contravene the Markets Law or CMC? If not, why not?

Coinbase response:

The DFSA proposes to introduce an obligation of an AMI or MTF to monitor the use of a forum (if provided by them) for communication in contravention of Market Abuse rules. Such an obligation may be burdensome if it were to create a wide-ranging, ongoing responsibility to monitor, review and understand communications proactively. It would be more proportionate to limit this obligation to having to notify and/or stop an infringing communication when it comes to the actual knowledge of the AMI or MTF.