

To:

International Organization
of Securities Commissions

Oquendo 12
28006 Madrid
Spain

31 July 2023**Re: Consultation Report on Policy Recommendations
for Crypto and Digital Asset Markets**

Coinbase Global, Inc. (together with its subsidiaries, **Coinbase**) welcomes the opportunity to respond to the Consultation Report published by the International Organization of Securities Commissions (**IOSCO**) on Policy Recommendations for Crypto and Digital Asset Markets (the **Consultation**).

Coinbase started in 2012 with the idea that anyone, anywhere, should be able to send and receive Bitcoin easily and securely. Today, we are publicly listed in the United States and provide a trusted and easy-to-use platform that millions of verified users in over 100 countries rely on to access the crypto economy.

Our years of experience provide an important example that policymakers could consider in applying long-standing regulatory principles to crypto-asset markets. Coinbase is the platform of choice for many of the largest, most sophisticated participants in crypto markets, who demand high standards of compliance, risk management, and investor protection. The practices developed at Coinbase and at some of our peer platforms provide useful insights that inform our comments.

We look forward to continuing to work with IOSCO to advocate for a harmonious global approach to the regulation of crypto-assets that is consistent with IOSCO's Objectives and Principles of Securities Regulation (the **Principles**). We would be delighted to share our experience in pursuit of this goal as IOSCO continues to seek public input.

Yours sincerely,



Faryar Shirzad
Chief Policy Officer
Coinbase

Introduction

We commend IOSCO for taking an active role in coordinating national approaches to the development of rules for crypto-asset markets. IOSCO serves a critical need by providing an international forum for securities regulators to align on issues that affect financial markets globally, as we are seeing with crypto-asset activity today. This role was important when IOSCO was founded in 1983, and became even more so with the introduction of the internet, which fueled the internationalization of securities markets. IOSCO is well positioned to help further establish global standards as we adopt the next version of the internet, built on blockchain technology and often referred to as web3.

A key consideration for IOSCO is that many crypto-assets are designed to be consumed on a network or protocol in exchange for a service, in a manner similar to how a traveler can redeem frequent flier miles in exchange for a plane ticket. But unlike airline rewards programs, crypto-assets that provide utility (**utility tokens**) can be transferred peer-to-peer between users in digital wallets on permissionless blockchains, and can be easily converted into other tokens on crypto-asset exchanges like our own. This can serve to expand their utility, allowing them to take on value beyond just the protocol they were designed for, including as a generalized means of payment or as an instrument that may have investment value.

The challenge this poses for national authorities is how to regulate consumer products that users may also hold for investment purposes. The temptation for a securities markets regulator is to consider only issues it is charged to oversee – those based on investment characteristics. Indeed, this is the lens through which the Consultation evaluates crypto-assets. But it would be a mistake if recommendations for crypto-asset markets undermined the intrinsic utility of the instruments themselves.

Regulatory treatment of crypto-assets needs to balance both consumer and investor considerations if we are to allow blockchain technology to fulfill the promise of a more decentralized and community-governed internet.

If done right, we can move beyond today's version of the internet, which is dominated by a handful of companies that profit from monetizing their users' personal data. The web3 version of the internet removes the economic advantage of walled gardens; it allows users to engage in community activity and commerce without having to reveal personal information to a third party. Ownership of personal data will be increasingly possible with advancements in digital identity (**DiD**) protocols. Decentralized commerce – sometimes referred to as “token-gated” commerce – is already possible with peer-to-peer value transfer through blockchain protocols. Neither requires a traditional financial (**TradFi**) intermediary. Both will require prudent regulatory treatment for wide-scale adoption.

Fortunately, the IOSCO Principles can accommodate this future. They embody the fundamental goals of markets regulation, which are the same for crypto-asset markets

and TradFi markets. However, because crypto-assets offer utility that is fundamentally different from traditional financial assets, merely retrofitting existing regulations will not suffice.

Fidelity to the Principles requires new, fit-for-purpose laws and rules.¹ To this end, we agree with IOSCO that, in applying the Principles to web3, “there are certain issues at play in crypto-asset markets which necessitate more targeted guidance and Policy Recommendations.”² Our goal throughout this response is to contribute our views, based on our experience as a company focused on responsible innovation in the crypto-asset markets, as to how IOSCO can best give effect to the Principles in a new context.

Coinbase’s overarching response to all regulators

We are encouraged that the Consultation adopts the approach advocated by Secretary General Martin Moloney of a regulatory framework focused on desired outcomes.³ For crypto-assets, these outcomes should include:

- Fair, efficient, and orderly markets
- Clear, workable rules that incentivize good behavior and root out bad actors
- Consumer protection from fraud and improper conduct
- Disclosure and reporting frameworks that provide regulators and market participants with accurate, verifiable, and decision-useful information
- Prevention of financial crimes, with appropriate protections for privacy
- Financial stability
- Incentives encouraging innovation

We urge IOSCO to recognize that the outcomes-based approach we are advocating here calls for more than the common refrain of “same activity, same risk, same regulation.” Blockchain technology enables some activities to be performed with less risk; achieving these positive outcomes will require updates to existing laws and rules.

In this letter, we provide our views as to how IOSCO can implement its Principles for crypto-asset markets. As an initial matter, we wish to highlight four key concepts:

Consumptive Use – Appropriately Defining the Regulatory Perimeter

IOSCO Principle 7 states that regulators “should have or contribute to a process to review the perimeter of regulations regularly.” In assessing the appropriate perimeter for

¹ Coinbase, [Petition for Rulemaking – Digital Asset Securities Regulation](#) (July 2022).

² Consultation at 59.

³ IOB Regulatory Insights Session, [Interview with Martin Moloney, IOSCO Secretary General](#), June 2022.

crypto-asset regulation, IOSCO should keep in mind that crypto-assets serve many purposes other than investment. They originated as a means of peer-to-peer payments, but have since evolved to include protocol governance, the “gas” used to pay for transactions on blockchain networks, and even artwork. While markets regulation may be appropriate for certain uses of crypto-assets, it is not for others. A flexible, carefully tailored regulatory paradigm can provide both robust oversight and also needed room for innovation, particularly for the unforeseen use cases that will emerge if regulatory frameworks take a balanced approach. We expand on this point below in our comments on Chapters 2 to 4.

Conflicts of Interest – Promoting Fair, Efficient and Transparent Markets

Ensuring fair, efficient, and transparent markets is one of the three objectives of securities regulation IOSCO has identified as underlying its Principles.⁴ Keeping markets fair requires mitigating conflicts of interest. However, as we discuss in more detail in our Chapter 2 comments, mitigating conflicts of interest does not necessarily mean forcing CASPs into the same market structure as TradFi, or disaggregating CASP functions.

It is prudent to recognize that the TradFi system has never eliminated conflicts of interest. These conflicts are allowed to persist because the risks can be mitigated, and the benefits of doing so far outweigh the costs and inefficiencies of a strict prohibition on multi-function TradFi intermediaries.

Likewise, in crypto-asset markets, there are benefits to combining certain functions within the same service provider, which is a natural consequence of blockchain technology. Notably, embedding real-time settlement into transactions eliminates the need for the classical TradFi clearing and settlement intermediaries. This offers tremendous capital use efficiencies and highlights the incongruity of calls to separate custody, clearing, and trading activities like with TradFi intermediaries.

Of course, where there are conflicts of interest with multi-function CASPs, we strongly agree that they should be mitigated through fit-for-purpose regulation designed to preserve the integrity of crypto-asset markets while providing robust protection.

Suitability – Protecting Customers Through Disclosure and Education

Customer protection is another key IOSCO principle. A vibrant market starts with its participants having the information necessary to make sound choices. Suitability requirements in securities markets provide an additional layer of protection – helping to match retail investors to appropriate investment recommendations.

However, we caution jurisdictions against applying suitability requirements too broadly. As noted above, crypto-assets have uses other than as investments. We do not believe CASPs should determine which blockchain innovations are open to the public or impair

⁴ IOSCO, [Objectives and Principles of Securities Regulation](#), May 2017.

consumers' ability to decide how to participate in the crypto-asset ecosystem. Any approach to the contrary could unduly hinder the development of token-gated commerce, and the promise of openness and individual autonomy that it is meant to foster. We expand on this point below in our comments on Chapter 9.

Custody – Protecting Customers by Protecting Customer Assets

Customer protection requires customer rights to be well-defined under law. The failure of FTX has understandably led many jurisdictions to focus attention on appropriate custody standards for crypto-assets, and IOSCO is well positioned to contribute to global practices that are efficient and secure.

Regulators should be careful not to adopt practices that could undermine the security of holding private keys on public blockchains, which entails a materially different set of considerations from the certificated and “transfer agent” practices that underlie TradFi custody. For example, some authorities believe that localizing all aspects of custody within their jurisdiction will offer the best customer protection, but the best security is often characterized by practices where elements are distributed across locations, not concentrated in a single location. Multi-jurisdictional solutions can offer greater efficiency and lower costs for global markets.

Custody has many nuances that we explain in more detail below. Notably, we believe it is important to consider physical custody requirements separately from legal segregation of customer assets. And any recommendation should recognize that custody is an evolving area where best practices are likely to continue improving in the years to come. Regulators will need to design custody requirements that protect customer assets without stifling innovation. We expand on this point below in our comments on Chapter 7.

* * *

The borderless nature of the internet and blockchain technology makes it critical that IOSCO members keep in mind their resolution to not only “cooperate in developing [and] implementing,” but also “*promoting adherence* to internationally recognized and consistent standards of regulation.”⁵ The last several years have seen regulators in different jurisdictions working on separate tracks. This raises the potential for divergence in regulatory treatment of crypto-assets, which threatens their ability to deliver the benefits that web3 and token-gated commerce can provide to consumers.

We strongly urge IOSCO to convey to its member regulators the importance of avoiding regulatory arbitrage by creating and implementing new rules that adhere closely to the IOSCO Principles. Regulators who undercut the letter or the spirit of the Principles will undermine IOSCO's efforts. We look forward to continuing to engage with IOSCO on these points and any future opportunities that may arise as global approaches to regulating crypto-asset markets are further developed.

⁵ Consultation at 57, emphasis added.

Chapter 2: Recommendations on governance and disclosure of conflicts

We generally support Recommendations 2 and 3, in particular the requirements for effective governance and organizational arrangements as well as accurate disclosures of the role and capacity in which a CASP is acting.

However, we caution IOSCO and member jurisdictions against concluding that certain combinations of activities cannot be performed within a single legal entity, or group of affiliated entities, solely because similar activities are structured differently in TradFi.

A good example is clearing and settlement. In TradFi markets there are separate, specialized entities to perform these tasks, and in the United States it can take up to two days to clear and settle securities transactions.⁶ This is because TradFi evolved over decades out of a paper-based system, where “the lack of an automatic, efficient, and trusted infrastructure that verified and transferred assets led to the need of separate intermediaries, such as brokers, custodians, exchanges, market makers, and settlement and clearing agencies, often with conflicting interests and incentives.”⁷ In the era before computers, trust was created by requiring intermediaries for each of these roles and then regulating them.

In contrast, settlement in crypto-asset markets is already performed on chain and in real time, obviating the need for separate entities to perform these tasks. Blockchain technology makes this possible by providing a single source of truth, a distributed ledger, that all market participants can access simultaneously, instead of maintaining separate ledgers that need to be reconciled at regular intervals. This technology also enables advances like atomic settlement, in which interconnected legs of a transaction, such as the transfer of an asset from one party in exchange for the transfer of funds from its counterparty, are both completed in the same instant or else not at all. Atomic settlement could eliminate significant costs and inefficiencies caused by settlement failures in our current delivery versus payment (**DvP**) transaction system.

This has led to the efficient combination of crypto-asset activities like order matching and custody. Without the need for clearing and settlement intermediaries to complete transactions, and given the ability for market participants to easily self-host their assets (e.g. for consumption purposes), there is no economic or technological necessity for a centralized custodian as in TradFi. For example, Coinbase customers can onboard assets, exchange them, and off-board all within minutes. Inserting a centralized or separate custodian would increase both cost and inconvenience to customers.

⁶ The SEC [recently approved](#) moving to a T+1 settlement cycle.

⁷ Coinbase, [Digital Asset Policy Proposal: Safeguarding America’s Financial Leadership](#) (October 2021).

Combining order matching and custody also makes markets safer and more efficient. The combination allows transactions to settle in real time, removing counterparty credit risk and the need to pledge collateral during the settlement period to protect against settlement failure, as well as the cost of the intermediary that would otherwise serve to protect against failure. This offers an improvement to the current system, and a potentially significant reduction in inefficiencies and potential harm that consumers could face as a result of delayed settlement, especially during periods of high volatility.⁸

More generally, and consistent with practices in TradFi, combining business activities can improve operational efficiencies, create better customer experiences, improve regulatory oversight, and lower overall costs to consumers. For example:

- Combining functions into a single technology stack offers economies of scope, reducing the number of rent-seeking intermediaries that can charge a fee for a transaction and thereby making access to markets more affordable for retail users.
- An integrated tech stack also results in more streamlined operational processes, including smoother interfaces between functions, thus reducing frictions and enhancing the overall effectiveness of compliance and risk management systems.
- Combining functions can also improve the overall user experience, enabling a wide range of services from a single platform with one overarching set of rights and risks to understand.
- Importantly for regulators, combining functions makes it easier for them to obtain a holistic view of the market by reducing the need to piece together activity from a large number of layered intermediaries, which often leads to gaps in regulation.

It is also important to recognize that multi-function intermediaries are common in the TradFi system. Similarly, the potential conflicts of interest raised in the Consultation regarding multi-function CASPs are also concerns for multi-function TradFi intermediaries. For example, the Consultation includes language that highlights the many functions that CASPs could perform, which could apply equally to G-SIBs:

“[M]any CASPs [substitute G-SIBs] typically engage in multiple functions and activities under ‘one roof’ – including . . . operating a trading venue, brokerage, market-making and other proprietary trading, offering margin trading, custody,

⁸ A notable example of this inefficiency in the United States is the GameStop episode in 2021, which highlighted the potential harm to consumers within the current regulatory system. A sharp spike in retail trading caused a dramatic increase in the volatility and trading volume of GameStop shares. As a result, some brokers needed to suspend trading because National Securities Clearing Corporation models required capital in excess of what was being held. Such an episode could have been averted with real-time settlement as currently practiced in crypto-asset markets.

settlement, lending . . . whether through a single legal entity or a closely affiliated group of legal entities that are part of a wider group structure.”⁹

Within TradFi conglomerates, conflicts of interest are pervasive. They are nonetheless permitted to operate with multiple functions because the efficiencies and customer benefits of doing so are deemed to outweigh the risks, provided that appropriate safeguards are in place.

There are a number of ways IOSCO and other regulatory bodies could and should apply similar safeguards to CASPs, including:

- Simple to understand, written disclosures can help customers understand any potential conflicts of interest, including the capacity in which the contracting entity is acting, any affiliates that may be involved in a transaction, and the corporate group’s overall governance structure and inter-company relationships.
- Separate governance (including independent directors on the board) and management can help ensure that decisions by entities within a single corporate group are made independently.
- Well-constructed and well-understood information barriers can minimize opportunities for improper use of information by different business lines or affiliates.
- Clear articulation of the duties that employees have to customers can clarify whose interests need to be considered by employees.
- Requirements that affiliated entities treat each other no better than they would treat a similarly situated unaffiliated party maintain the integrity of markets.

We believe these safeguards can effectively address the vast majority of potential downsides, enabling the benefits of combining functions to be realized in a competitive marketplace.

⁹ Consultation at 16. With minor edits to the language in the block quote – deleting one reference to “exchange services,” and one to “staking” – it becomes equally true of G-SIBs as of CASPs.

Chapter 3: Recommendations on order handling and trade disclosures (trading intermediaries versus market operators)

We strongly support IOSCO's goal of equitable markets defined by transparency, and we agree with the principles underlying Recommendations 5 and 6 – that CASPs should be required to handle customer orders fairly and equitably, and to provide pre- and post-trade transparency in a manner designed to achieve similar regulatory outcomes as in TradFi markets.

When crypto-asset tokens are traded on an exchange, such as through an order matching engine like what Coinbase offers, it is important for customers to understand that their trades are being executed on an agency basis, and who their potential counterparties include. To this end, CASPs should have clear and effective policies, procedures, and controls defining how crypto-assets are traded and held.

But it is important to recognize that many aspects of the current crypto-asset trading environment already work very well. As we have shown in [previous analysis](#), for crypto-assets like Bitcoin, price efficiency is on par with equity securities.¹⁰ Price consistency across exchanges, as in TradFi markets, is achieved by a set of market makers engaged in arbitrage. Notably, this happens without the need of complicated order protection rules, which would be onerous if not impossible to implement in the current global trading environment for crypto-assets.

Because of this, there are certain features of existing securities markets that we recommend not be recreated in crypto-asset markets. For example, in the United States, securities exchanges are subject to regulations intended to create competition across trading venues that have resulted in unnecessary complexity. Traders are subject to convoluted pricing as a result of various fees and rebates, where analysis has shown there can be over 1,000 different pricing paths for a single order.¹¹ This is further confused by customer protection rules that require brokers to route orders to exchanges based upon the best price, but without regard to other factors like speed and trade size, even if an investor prefers otherwise.

These types of “trade through” rules have created significant controversy in TradFi markets and are even less suitable for crypto-asset markets. In particular, unlike with equity securities where the asset characteristics themselves are homogenous (i.e., a

¹⁰ See Paul Grewal, Chief Legal Officer, Coinbase, *Re: Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E* ([GBTC Comment Letter](#)), 3 March 2022.

¹¹ RBC Capital Markets, [Comment Letter Re: Proposed Rule to Establish a Transaction Fee Pilot for National Market System Stocks](#), File No. S7-05-18.

residual claim on an issuer), crypto-assets can represent a number of different types of interests and rights (e.g., DAO governance tokens, virtual currencies, utility tokens, security tokens, stablecoins, NFTs) and different user communities. The market structure for each requires different considerations.

In contrast to the lack of flexibility of order handling in TradFi markets, there is significant innovation taking place on the sequencing of transactions on decentralized and permissionless blockchain networks. For example, when a user initiates a trade on an automated market maker like Uniswap, they select the trading pair, amounts, and slippage (i.e., post-order price movement) they are willing to accept. This transaction can only be included in a block if a user's preferences – relating to more than just price – are met. This is a key differentiator of blockchain technology. Only valid transactions that are executed according to the selected preferences of the user can be included in blocks, regardless of their sequencing within the block.

This flexibility recognizes that there is no one correct way to handle an order; it depends on the preferences of the trading counterparties. Extending the uniswap example, if there are 10 people initiating a trade in the same pool (e.g., ETH/USDC), some of which are selling and some of which are buying, there is no “correct” sequencing. Each buyer would prefer to buy at the lowest price possible, while each seller would prefer to sell at the highest price possible. This helps to explain why so many different models are in the process of being developed, based on auctions, first-come-first-serve, encrypted mempools, preference matching, and many other transaction sequencing methodologies.

Permitting continued experimentation by validators, block builders, and other network participants is crucial for the development and optimization of blockchain technology. This should be recognized as an important consideration in the development of regulatory standards relating to order handling, routing, and sequencing by both centralized crypto-asset exchanges and DeFi protocols.

We caution against taking actions that would hinder this innovation. Decentralization is a keystone part of blockchain technology. One of its tenets is that anyone can operate the network's block producing infrastructure, such as validators, sequencers, block builders, searchers, or relays. Importantly, these operations are performed by a large number of technically sophisticated market participants that do not have the budget or resources of large organizations. Regulators should be careful in the requirements placed upon these persons and entities because if the operational burdens imposed are too great for smaller participants to participate, then this will threaten the central tenet of decentralization.

We more broadly and wholeheartedly agree that many existing market regulatory requirements should also apply to crypto-asset trading, but tailored in a way that protects consumers and investors, without harming crypto-assets' practical uses and consumers' ability to act in accordance with their preferences.

In response to specific proposals and questions asked in Chapter 3 of the Consultation:

When entering an agreement to provide trade execution services to clients, disclose how the execution services will be done (e.g., executed on a principal or agency basis)

- For every exchange or broker customer, there should be clear disclosures on how trade execution is performed. All orders should be handled consistent with these disclosed rules in a non-discretionary method.

Disclose to regulators and market participants, the order-routing procedures and how these are applied fairly (e.g., requirements with respect to precedence of client orders and prohibition of front-running)

- Any order routing procedures by a broker operating on multiple exchanges should be clearly disclosed to and consistently applied across all customers. Different customers may have routing preferences related not only to price but also quantity and speed of execution, and a one-size-fits-all approach to order routing should not be required, as long as customers are clearly informed about any applicable routing and other handling procedures.
- As we also note above, mandating complicated order routing requirements is unlikely to work across jurisdictions, and certain prohibitions – for example, trade-through rules such as in the United States – will be impracticable and also unnecessary on a global stage.
- Consumer platforms that engage directly with customers and provide exchange services, or brokers that operate exclusively on a single, specialized platform on behalf of its customers, should clearly disclose their pricing models, including plain-language explanations of any bid-ask spreads and all fees charged, but should not have a requirement to route customer orders to other venues.
- As in TradFi markets, prohibitions on front-running, wash trading, momentum ignition strategies, spoofing, and other manipulative trading practices should be strongly considered by all regulators, to promote fair, orderly, and efficient crypto-asset markets.

Disclose any arrangements in place with third parties for routing of client orders, including arrangements to disclose payment for order flow (PFOF), or any other forms of inducements

- We strongly agree that any third party agreement related to order routing and its potential implications should be clearly communicated by CASPs to their customers. As in our response above, any CASP should clearly disclose its fee structure and routing practices including any form of inducements. At the same time, we also strongly believe that market regulators should not mandate any specific order routing practice.

Take reasonable steps to deliver best execution for clients

- In competitive markets such as currently exist for crypto-assets, service providers have strong economic incentives to deliver best execution for their customers. Clear disclosure of practices will enable market discipline, which is the best inhibitor to any misleading or deceptive behaviors.
- As we explain above, the meaning of “best” execution to a customer may reasonably differ on the importance of price, volume, and immediacy of execution, and the same customer may have different preferences depending on the type of transaction they wish to execute.
- Jurisdictions should not implement a one-size-fits-all approach to order execution, and we strongly believe that any execution practices by CASPs should be clearly disclosed to its customers. Based on this information, customers can then make informed choices about the venues and brokerage services they seek to engage.

Disclose any significant differences from order handling rules applied to the trading of financial instruments on public markets in the jurisdiction of the client

- As we explain above, given reasonable differences in customer expectations and preferences for order execution, clear disclosure is the best mitigant to any harm with routing and other handling practices. These disclosures should leave a customer with a clear understanding of fees and execution efficiency such that they can reasonably differentiate across service providers for similar crypto-assets.
- We do not believe it is relevant or even possible for disclosures to compare and contrast order execution practices across different asset classes, either within or across jurisdictions. As we explain above, current regulations around order handling rules in TradFi markets are extremely complicated and poorly understood by even professional market participants. Moreover, they are specific to one type of asset, and therefore not well suited to the heterogeneity that characterizes crypto-assets. Disclosures, particularly to retail consumers and investors, should focus primarily on the fees and costs related to any services they use.

Do respondents believe that CASPs should be able to engage in both roles (i.e. as a market operator and trading intermediary) without limitation?

- As we describe more fully above, market operators (i.e., trading venues like Coinbase) offer direct-to-consumer services, allowing users of blockchain protocols and related services to purchase crypto-assets for consumptive purposes, in the same manner as a consumer might expect from any online storefront. In these situations, any need for advice is wholly different from what a TradFi intermediary (i.e., broker) might provide to an investor. Purchasers are making decisions based on immediate use cases, and the information most

relevant is the fee structure, which can be disclosed without need of separate intermediary requirements.

- As we also acknowledge, the expected future utility of many crypto-assets make them appealing as potential investments. We can see clear evidence of this by the amount of professional investing that is entering crypto-asset markets – many large asset managers are creating or seeking to create traditional investment products (like ETFs) to make these benefits broadly available in TradFi markets.
- Coinbase strongly believes in customer protection. We encourage bringing similarly high standards from TradFi markets to crypto-asset markets, and this should be done through appropriately tailored rules that account for the non-investment aspects of the ecosystem.
- As discussed in response to Chapter 2 above, regulators should consider measures to mitigate potential conflicts of interest that can arise between a market operator and its customers. This is particularly the case in the context of trading for investment purposes, which is more likely to exhibit the same or similar characteristics as trading in other types of financial instruments. As in TradFi markets, it may be appropriate to require these activities – serving as a market operator and a trading intermediary – to be performed by separate legal entities, with appropriate guardrails between each entity, but it should be permissible for such legal entities to be affiliated as part of the same corporate group.
- Per our discussion above, we strongly caution jurisdictions against mandating complicated order routing rules like what exists for some markets in equity trading, which would be ill-suited, unnecessary, and impractical for global crypto-asset markets.

Given many crypto-asset transactions occur “off-chain” how would respondents propose that CASPs identify and disclose all pre- and post-trade “off-chain” transactions?

- Coinbase has long advocated for regulatory oversight of centralized finance (**CeFi**) activity that occurs off-chain, and in particular, when a CeFi entity takes custody of crypto-assets on behalf of their customers. Financial services that rely on performing custodial services – including off-chain order matching activities such as Coinbase offers – should have appropriate supervisory oversight.
- We encourage jurisdictions to consider comprehensive oversight of off-chain activity by CeFi entities, through rules that are compatible across jurisdictions to ensure that crypto-asset markets remain global.
- In the United States, for example, such oversight is conducted by states through money transmission license registration, through trust companies, and specialized licenses like what the state of New York offers with its BitLicense. At the federal

level, the Commodity Futures Trading Commission (**CFTC**) oversees derivatives transactions (futures contracts) in crypto-asset commodities like Bitcoin and Ether. The United States would, however, benefit from a more comprehensive federal framework, as is actively being considered in pending legislation.

- Pre- and post-trade transparency is critical to the efficiency of any market trading activity, and should be a principal characteristic of regulatory requirements related to crypto-asset trading. Pre-trade price transparency helps purchasers to decide on a trading venue. Post-trade transparency allows market participants to evaluate the efficiency of services provided.
- In establishing rules, regulators should carefully consider how any disclosure requirement would impact the economics of trading, noting that in TradFi markets, trade data is a primary source of revenue for trading venues. This is important because trade execution services have become commoditized in many markets through intense competition, which is already true in crypto-asset markets too.

Finally, in considering how to regulate market operators, we encourage regulators to recognize that, in many respects, today's crypto-asset markets offer lessons to be learned for the trading of traditional securities. Crypto-asset markets offer a glimpse into the "what if" scenarios of paths not taken by securities regulators over the past several decades, including the roles that intermediaries take – many of which were established over a century ago, before computers even existed – to facilitate trading.

Chapter 4: Recommendations in relation to listing of crypto-assets and certain primary market activities

Coinbase agrees with the general principle that market participants and regulators must have accurate, verifiable, and decision-useful information about the crypto-assets listed by CASPs and listing standards and processes.

To establish a proper regulatory framework, it is important for IOSCO and its members to recognize that crypto-assets are different from other financial market instruments, such as securities, which affects the set of information most useful to their purchasers. This in turn affects how CASPs should approach listing decisions.

Crypto-assets are different and require different information

As we have described above, the information a purchaser needs for a consumption decision – i.e., the immediate use of a crypto-asset in a protocol – can be different from the information a purchaser would consider when making an investment decision that entails a security. For example, a Coinbase customer purchasing ETH to execute a smart contract is making a decision based on the Ethereum network’s current utility. In this decision there is no consideration of the asset’s future utility, which is otherwise the basic value proposition underlying an investment in a security.

Notably, the information a consumer needs to assess a token’s utility – current or future – is materially different from a security. For example, unlike equity in a company, a crypto-asset token does not give the holder any residual economic claim or interest in its issuer, and therefore does not depend on an issuer’s ongoing financial well-being. The value of a crypto-asset depends on factors that are not typically enumerated in securities disclosure regimes. These factors center on the technical details about the protocol or network, the plan of token distribution, the consensus mechanism and how transactions are validated, how the source code may be updated or changed, and other information about governance, supply, control, and operational capabilities.

Consumers will be best informed if disclosure requirements focus on characteristics that are asset-specific, as opposed to issuer-specific, and not viewed only through the lens of an investment.

This is important because asset characteristics will endure and always be relevant while the original issuer may not. One of the primary goals of many crypto-asset development teams is to eventually relinquish control over their protocol to a community of users. In practice, this means that after the project is operational and reaches a critical mass of users, the team’s control over the live protocol and any related crypto-asset diminishes significantly, if not entirely. At that time, the initial sponsor of the protocol may dissolve or disaffiliate from the protocol (e.g., by relinquishing IP rights to a separately managed and owned, arm’s length entity) or otherwise relinquish control gradually over time.

This path to decentralization ends with the ability of a crypto-asset to live and thrive without the original issuer, and the utility of its blockchain network or protocol determined by its community of users. When this happens, the original development team may no longer have a unique ability to modify or influence the functionality of the crypto-asset, blockchain network, or protocol.

Regulators should implement frameworks that account for this transition, allowing for different levels and types of available information for projects at different stages on the path to decentralization. Coinbase has commented extensively on this topic in the United States, including the types of information that investors and consumers would benefit from receiving and how the disclosures could change over time.¹² We are broadly encouraged by jurisdictions that are taking these crypto-asset properties into account, including recent legislative progress in the United States.¹³

Who should be responsible for which disclosures?

For crypto-assets that have an identifiable central team, that team should be primarily responsible for disclosing the key features and risks of the crypto-asset, and CASPs should be able to rely on that information.

Particularly as projects become decentralized, to address the need to provide customers with appropriate disclosures, regulators should strike a balance between imposing obligations on exchanges to publicly maintain certain information on crypto-assets that they list, with the practical reality that much of the required data will already be publicly available in different forums and formats. And, provided that the information is publicly available, a CASP's liability for maintaining such information should be limited to material errors or omissions caused by the exchange's own gross negligence.

Specific comments on IOSCO's disclosure recommendations for CASPs

It would not be consistent with TradFi markets or a focus on outcomes-based regulation to require a CASP to provide crypto-asset specific disclosures beyond those made available by the crypto-asset's issuer itself.

Indeed, such disclosure would not even be consistent with the concept of "same activity, same risk, same regulation" – which, as discussed above, we do not believe is an appropriate approach. Clearinghouses and exchanges are not required to develop and distribute their own disclosure documentation for risks beyond their own operations and offerings, and neither should CASPs. CASPs, like TradFi intermediaries, are not in the best position to develop disclosures around the risks of the assets they make available.

¹² Coinbase, [Petition for Rulemaking – Digital Asset Securities Regulation](#) (July 2022).

¹³ See, e.g., Financial Innovation and Technology for the 21st Century Act (H.R. 4763), 118th Cong., available at <https://www.congress.gov/bill/118th-congress/house-bill/4763>.

CASPs simply are not in a position to provide systematic disclosure of issues relating to manipulation or security failures that affect an individual crypto-asset. A CASP is only in the position to make available such a disclosure if it receives the information from an issuer, it can collect the information publicly under the same conditions as markets generally, or the failure or manipulation is due to the CASP's own systems. Otherwise, the CASP has no greater ability to disclose these incidents than any other market participant.

For similar reasons, a CASP would not be in a position to disclose the ownership concentration for a particular crypto-asset, unless that information is provided by the original issuer. While a CASP can track wallet-level information, the CASP would not be able to translate this into ownership information, except for those wallets registered to customers of the CASP or which are otherwise publicly known. Moreover, a CASP cannot disclose information regarding lock-ups of insiders, unless that information is already publicly available from the issuer. Even if the CASP's obligation is only to disclose the concentration on its own platform, that disclosure could pose a security risk to specific accounts by publicizing their holdings.

Finally, a CASP would not be in a position to determine and disclose the rights and entitlements that a crypto-asset holder has following a hard fork or airdrop. A CASP can disclose its general policy for handling airdrops and forks, but a CASP cannot and should not be expected to know crypto-asset-specific information, such as if or when an airdrop or fork will occur. These situations are unpredictable, highly technical, and often not publicly knowable until they have already happened. These are determinations made by the issuer of the crypto-asset and any resulting disclosure needs to come from the issuer. While the CASP can distribute such disclosures, it would be ineffective for a CASP to be required to make this disclosure.

Listing determinations and disclosures

Apart from disclosures specific to the crypto-asset itself, Coinbase supports having CASPs provide customers with information on their listing and delisting standards and associated processes. However, we believe that a requirement to make the standards and processes themselves public risks exposing material non-public information and trade secrets, in addition to making it easier for unscrupulous actors to game the system. Instead, the actual standards and processes for listing and delisting should be disclosed to the relevant markets regulator with appropriate confidentiality protections.

CASP ownership interests in crypto-assets it lists

With respect to CASPs listing crypto-assets in which they or their affiliates may have a material interest, as discussed in response to Chapter 2, Coinbase believes mitigating measures will be sufficient to address most conflicts of interest. For example, a CASP that invests in a development team that has issued tokens could have conflicting incentives to both list the token and maintain rigor and objectivity in its listing processes. A

combination of public disclosure and governance measures, however, could mitigate this conflict.

For example, CASPs could:

- Publicly disclose the names of tokens in which they have a venture investment, as well as all crypto-assets in which they have a material interest
- Identify and consider through company policy and procedures potential conflicts of interest internally as part of their token listing process
- Ensure that those involved in the listing decision have reporting lines, performance standards, and compensation that are separate and unrelated to performance of the portfolio company issuing the token

Overall, we believe it is important to consider relevant factors case by case and address potential conflicts of interest through tailored measures rather than imposing blanket restrictions or bans.

Chapter 5: Recommendations to address abusive behaviors

Coinbase is strongly supportive of regulatory efforts to address abusive market behaviors. Because the technology and market structure of crypto-assets are new, strictly applying existing regulatory approaches to market abuse may lead to ill-fitting regulation for crypto-assets.

Coinbase agrees that market surveillance is an important means to prevent or detect abusive behaviors, and in the United States our CFTC-registered Designated Contract Market (**DCM**) already serves as a registered self-regulatory organization (**SRO**) and conducts surveillance on its futures platform for abusive and manipulative behavior. We refer potentially manipulative or fraudulent behavior on our spot exchange to the New York Department of Financial Services (**NYDFS**),¹⁴ and to the Financial Crimes Enforcement Network (**FinCEN**).

The tools we use for crypto-asset market surveillance are superior to those commonly used by securities exchanges. As one example, Coinbase’s market surveillance system operates on a real-time basis, 24/7/365, as compared to the typical T+1 or T+2 monitoring lag common for such systems in TradFi markets. Because crypto-assets settle instantly, CASPs need instant visibility into their markets, and every CASP should be performing market surveillance proactively. In addition, our surveillance system uses machine learning techniques to add an additional layer of monitoring above manual tracking, enabling real-time, actionable insights.

IOSCO and its members would do well to leverage the best practices that are already being developed by CASPs to manage and address potentially abusive behaviors. These practices build on tools and learning from TradFi markets, with further enhancements specific to crypto-asset markets. Coinbase has for years made public the principles and approaches that guide our market integrity and trade surveillance operations.¹⁵ And as we continue to gain experience, we apply what we have learned to further our longstanding mission of leaning into compliance in crypto-asset markets. We currently take the following steps, among others, to safeguard our platform from abuse:

- Maintain insider trading policies that prevent those associated with Coinbase from trading crypto-assets with non-public information, including based on changes to our list of supported crypto-assets, with an enhanced policy for employees who have more insight and control over non-public information;
- Provide employees with a regularly updated list of restricted crypto-assets to prevent any such insider trading;

¹⁴ See New York DFS, [Guidance on Prevention of Market Manipulation and Other Wrongful Activity](#) (7 Feb 2018).

¹⁵ Coinbase, [How Coinbase thinks about market integrity and trade surveillance](#), Oct. 2021.

- Mandate that all Coinbase employees and directors trade crypto-assets only on our platform so we can proactively disable trading for certain assets and have full visibility into employee and director trading behavior to monitor for prohibited trading activities;
- Prohibit the use of trading algorithms by Coinbase employees;
- Prohibit wash trading, trade spoofing, trade layering, front-running, trade churning, and quote stuffing;
- Maintain an auction process for matching bids and offers on the first day of a listing or for the restarting of trading; and
- Follow an escalation process for when we find instances of market manipulation that includes reporting to the appropriate regulatory authorities and taking steps to prevent further manipulation by a given customer, including by removing their access to our platform.

Coinbase believes that surveillance programs like ours need to work across crypto-asset markets, but there is currently no regulatory requirement or process for sharing information related to suspected market abuse between exchanges. Even without regulatory mandates, we are in the process of developing surveillance sharing agreements with other regulated exchanges in the United States for exchange-traded products referencing Bitcoin that are proposed to be traded on securities exchanges.¹⁶ While we and other exchanges can enter into agreements such as these today, that path forward is sometimes hindered by commercial considerations and a general collective action problem that regulatory authorities would be in a good position to solve. For this reason, we support application of uniform standards and requirements developed through processes such as this one undertaken by IOSCO.

¹⁶ Nasdaq, [Proposal to list and trade shares of the iShares Bitcoin Trust under Nasdaq Rule 5711\(d\)](#), 23 June 2023, at page 33 (“On June 8, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (“Coinbase”) to enter into a surveillance-sharing agreement (“Spot BTC SSA”), and the associated term sheet became effective as of June 16, 2023.”).

Chapter 6: Recommendation on cross-border cooperation

We believe that regulation should reward, not penalize, businesses that seek to operate with high standards of compliance and regard for the law. To that end, we are strongly supportive of IOSCO's goal of fostering a harmonious global approach to the regulation of crypto-asset markets. Because crypto-assets are inherently global – native to the internet itself – we agree with IOSCO that there is a need for global cooperation and regulatory certainty. We support cooperation agreements and sharing of best practices among regulators to promote predictability and consistency. We also believe that globally harmonized regulation will reduce opportunities for regulatory arbitrage.

We understand that there will likely be variation across jurisdictions early in the development of crypto-asset regulation. However, we expect that convergence will take place over time, and we support IOSCO and other global standards setters playing an important role in driving that process. We believe that IOSCO can encourage this convergence by urging its constituent regulators to adopt new fit-for-purpose regulation that is built around the Principles.

Chapter 7: Recommendations on custody of client monies and assets

Coinbase strongly supports regulatory efforts to ensure that customer assets are secure and protected. Coinbase also agrees that CASPs should be permitted to use a variety of methods and structures to securely hold and track customer assets. This technology-agnostic approach supports and facilitates innovation rather than locking in current best practices that may ultimately be surpassed by better solutions.

With respect to IOSCO’s comment regarding asset segregation, Coinbase agrees that customer assets should be separate and distinct from a CASP’s proprietary assets, and that CASPs should maintain accurate and up-to-date records of customer assets at all times.

Regulatory authorities should be mindful, however, that it is beneficial for CASPs to hold a de minimis amount of proprietary assets in customer omnibus accounts to facilitate customer transaction order instructions. This is consistent with how many regulated TradFi entities operate today. For example, in the United States, CFTC-regulated futures commission merchants are required to add a de minimis amount of their own funds to customer omnibus accounts to ensure that they never use one customer’s assets to pay for another’s obligations. These funds are treated as if they belong to customers, meaning that they are subject to the same protections and use restrictions as customer funds, and would be treated as customer property in an insolvency. A similar practice employed in crypto-asset trading allows Coinbase to pay customers’ network or “gas” fees, and to temporarily bridge the movement of customer assets between cold and hot storage for immediate order execution, without using one customer’s assets to cover another customer’s trading fees or requirements.

To preserve these benefits, we propose that jurisdictions permit as part of any asset segregation requirement for CASPs to hold de minimis house assets in customer accounts solely for the purpose of facilitating user transactions. Moreover, as is already the required practice for some regulators, these assets should be treated as belonging to customers for all relevant purposes, including in the event of an insolvency.¹⁷ To the extent that, as the Consultation notes, “laws and court decisions in certain jurisdictions might not yet have evolved in ways that provide CASP clients with legal certainty,” we urge IOSCO to recommend practical standards to clarify how CASPs can best provide strong legal protections for customer assets based on existing laws and rules.

¹⁷ See NYDFS, [Guidance on Custodial Structures for Customer Protection in the Event of Insolvency](#), at n.7 (Jan. 23, 2023).

We also agree with the following IOSCO recommendations:

- CASPs providing custody services should be required to clearly disclose their measures for preventing loss of customer assets, including in the event of the CASP's insolvency. It is also important to acknowledge, as IOSCO does here, that CASPs should not be required to reveal technical information that could heighten cybersecurity risks.
- CASPs should be required to adopt appropriate systems and policies to mitigate the risk of customer asset loss. Coinbase employs sophisticated security practices to protect our systems and customer assets, and we are continually developing new technologies to remain at the cutting edge. IOSCO should therefore continue to make clear that security requirements should be technology-agnostic and designed to support, rather than stifle, innovation in this area.

We also note that the security of crypto-assets is best served by a global infrastructure that requires coordinated action from geographically distributed actors to operate. Current security best practices include separating and storing private key materials across different locations, time zones, and business functions. Imposing requirements that would limit the ability of a custodian to follow best practices related to the physical location of key materials would diminish rather than strengthen their resiliency and security protections. Geographic separation of human capital and security infrastructure eliminates the ability to compromise the safeguarding of assets through a single point of failure and minimizes the potential damage of an isolated security breach within any single jurisdiction.

We believe that IOSCO's final recommendations should recognize the existence of this acute security risk and call upon members to refrain from imposing physical localization requirements. Any requirement for specific human or technical resources to be exclusively located in a single jurisdiction would materially increase the vulnerabilities of a cyber-attack. Host-country authorities should rely to the extent possible on cooperation with a CASP's home-country regulators, in the interest of promoting consistently high standards of security for customer assets.

Finally, we do not advocate for any valuation requirement for custody activity. Question 15 asks whether CASPs should be required to have procedures in place for fair and reliable valuation of crypto-assets in custody. We do not believe such a requirement is necessary or beneficial for the safekeeping of customers' crypto-assets. A CASP's obligation to protect its customers' assets does not depend on the value of those assets.

Chapter 8: Recommendation to address operational and technological risks

As with every business, there are operational and technological risks. For businesses that engage in crypto-asset activity, this entails risks specific to blockchain technology, which can and should be managed with thorough and appropriate cyber-security and risk management programs. As a result, we generally agree with the recommendations that IOSCO has proposed. We believe that crypto-asset markets will work most effectively and safely when the bar for risk management is set high.

To reach sound and well-informed regulatory decisions for crypto-asset activity, policymakers need to continue developing expertise and greater fluency with blockchain technology.

In particular, this includes recognizing areas where operational risks are lower for crypto-asset transactions than for comparable transactions in TradFi instruments. For example, a decentralized, distributed ledger provides protection against the risk posed by a standalone cyber-security failure, which could lead to corrupted or compromised recordkeeping in a centralized and privately secured database. A properly decentralized blockchain network can provide better protection from these types of isolated cyber-incidents, which are commonly reported by business organizations that rely on conventional information technology.

Coinbase has adopted a rigorous risk management program that is designed to protect against the types of operational and technological risks discussed in the Consultation. We encourage IOSCO and its members to look to best practices in the industry as a way to understand how risk management programs can be tailored to the nature of crypto-assets.

We are also supportive of thorough disclosure to customers of the technological risks involved in web3. While disclosure cannot mitigate risk by itself, it would help customers protect themselves from the harm that can be caused by poor risk management practices.

Chapter 9: Retail distribution recommendation

As we have emphasized above, web3 is about more than just investment. Token-gated commerce will drive the read, write, and own framework of web3.¹⁸ In this new paradigm, consumers will not only be able to read and publish content on the internet, but also to retain much more of the value created by their online activity. Any regulation of retail crypto-asset markets with the retail consumer in mind should balance the important objective of investor protection with the values of openness and individual autonomy that characterize web3.

Strong protection for retail market participants is critical. It is also critical to avoid overly prescriptive regulation that prevents market intermediaries from serving the retail sector. As with market regulation generally, protecting retail market participants is best done through requirements that enable them to understand the risks underlying their decisions. Disclosure requirements and customer education initiatives that bring transparency to crypto-asset products and services is the best way to enable customers to make well-informed decisions.

In pursuit of retail consumer protection, we caution against the blanket adoption of suitability requirements designed for financial instruments and securities markets. As we explained in more detail above, crypto-assets can have both consumptive and investment purposes. Suitability requirements can protect against unscrupulous actors seeking to put investors into products that don't match their investment profile, but it is less clear how to adapt those rules to decisions related to consumer preferences.

Making a CASP responsible for a retail user's purchase of a particular crypto-asset, which may well be for payment or a consumptive use, puts the CASP in the position of deciding which blockchain innovations are open to the retail public. CASPs should not have that power or that responsibility. Even in the narrower case of an investment recommendation to a specific retail customer, it is important for national regulators to carefully define what constitutes an investment recommendation and what obligations they entail. Moreover, merely listing a particular crypto-asset for trading, or providing custody or other services for a crypto-asset, should not in itself be considered an investment recommendation and should not trigger any kind of suitability obligation.

¹⁸ "Read, write, and own" refers to the stages of development of the internet. In web1, users were able to read information that was published on the internet, but the publishing was done by entities on designated websites with no ability for users to interact other than by reading. There was also no value that accrued to the network from those interactions. In web2, users were able to publish (or write) their own content on the internet, but the content that they wrote and any resulting financial value generally belonged to the companies that hosted the service. In web3, users will be able to read, write, and own the networks that they use. In addition to the advancements of the first two evolutions of the internet, value on web3 will accrue to the participants in the network, the users, as they will own and validate the mechanisms that drive the distribution of information. a16z, [State of Crypto 2023](#), April 2023.

Chapter 10: Box text on stablecoins

Although Coinbase holds a more optimistic view than IOSCO of stablecoins’ potential utility for payments,¹⁹ we appreciate the Consultation’s recognition of stablecoins as an important part of the crypto-asset ecosystem. Stablecoins are a prime example of the non-investment use of crypto-assets. While we agree that the recommendations in the Consultation can broadly be applied to stablecoins as relates to the function they play in crypto-asset markets, we caution IOSCO not to over-reach its mandate, as many of the topics covered in the “box text” are within the purview of prudential regulators and standard setters.

We are particularly concerned that the Consultation proposes to give CASPs responsibility for disclosures that should instead rest with stablecoin issuers. Indeed, some of the information that the Consultation directs regulators to consider requiring CASPs to disclose – for example, “whether there is segregation of reserve assets from the stablecoin issuer’s own assets” – cannot be ascertained except by the issuer itself. While we agree that much of the information contained in the disclosure recommendations would benefit crypto-asset markets, the obligation to publish these disclosures – and any associated legal liability – must remain solely with stablecoin issuers and be addressed in requirements that apply directly to them. CASPs’ obligations should be limited to making available relevant information that a stablecoin issuer has already published.

Coordination between markets regulators and the regulators overseeing stablecoin issuers is especially important with respect to stablecoin disclosures. It would be an inappropriate regulatory outcome if a CASP that lists a stablecoin for trading is required to disclose more information than the issuer itself must disclose to launch the stablecoin in the first place.

IOSCO rightly recognizes the important role that stablecoins can play in the operations of a CASP. It is because of this role that the proper regulation of stablecoins is so vital. We hope that this Consultation is the first step in a collaborative process to work with IOSCO to develop a global framework that supports the benefits that a well-developed ecosystem of stablecoins can provide.

Conclusion

Coinbase appreciates IOSCO’s active engagement with the public on the development of global regulatory standards for crypto-asset markets and we look forward to continuing to share our experience with you in the weeks and months to come.

¹⁹ Coinbase, [Stablecoins Whitepaper](#), July 2022.