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By Email: consultation-02-2019@iosco.org

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International Organization of Securities Commissions (IOSCO)
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Spain

**Re: Public Comment on Issues, Risks, and Regulatory Considerations
Relating to Crypto-Asset Trading Platforms**

Dear Mr. Ward:

We would like to thank the Board of the International Organization of Securities Commissions (“IOSCO”) for preparing the Consultation Report on Crypto-Asset Trading Platforms (the “Consultation Report”) and soliciting public comment. The Chamber of Digital Commerce (the “Chamber”) appreciates the opportunity to participate in this important dialogue and to submit this public comment.

The Chamber is the world’s largest global blockchain trade association, representing over 200 companies working in the digital asset and blockchain industry. Our mission is to promote the acceptance and use of digital assets and blockchain technology, and we are supported by a diverse membership that represents the blockchain industry globally.

Through education, advocacy, and close coordination with policymakers, regulatory agencies, and industry across various jurisdictions, our goal is to develop a pro-growth legal environment that fosters innovation, job creation, and investment. We represent the world’s leading innovators, operators, and investors in the blockchain ecosystem, including leading edge start-ups, software companies, global IT consultancies, financial institutions, insurance companies, law firms, and investment firms. Consequently, the Chamber and its members have a significant expertise and interest in blockchain technology and ensuring that the blockchain ecosystem continues to grow and thrive.

For the purposes of this public comment, the Chamber has prepared general comments that should be considered throughout, as well as comments addressing specific sections of the Consultation Report.¹ Two key themes emerge from our comments:

1. Development of appropriate and effective regulatory guidelines in this emerging and rapidly evolving area will benefit with ongoing engagement with industry participants and stakeholders, and
2. The importance of recognizing that a broad array of crypto-assets has emerged, and even more will emerge over time, not all of which are crypto-asset securities. Regulatory guidelines regarding the appropriate categorization and regulatory treatment of these assets will provide needed clarity to enable implementations of blockchain technology to flourish.

General Comments

Balancing Innovation and Regulation. The Chamber agrees that striking the right balance between fostering innovation and regulatory oversight is critical to continued growth in this space. This is true specifically with respect to Crypto-Asset Trading Platforms (“CTPs”).²

As with all transformative technological innovation, it can be difficult to determine which aspects of the innovation to promote as well as the appropriate regulatory scope, fit, and strategy. Global courts, regulators, and policy makers are actively considering a variety of ways to approach crypto-assets and CTPs. Striking an appropriate balance between protecting consumers and investors on the one hand, while allowing them access to new and highly innovative emerging markets on the other hand, is difficult. The risk related to an error in regulatory judgement is also high - overregulation will stifle crypto-asset innovators and investors, and ineffective regulation and regulation with harmful unintended consequences for industry innovators and investors will also do the same.

To appropriately support and regulate crypto-asset innovation, it is critical that policy makers and regulators understand crypto-asset technology and the various iterations of these technologies in an expert capacity. Achieving such an understanding will take time and will require regulators and policy makers to establish transparent, meaningful, multi-stakeholder working groups and collaborative dialogue to ensure they are informed and working in a proactive manner to support both the growth of this highly valuable innovative sector, and to help guide the sector to embed best practices and standards into everyday operations. Meaningful consultation with industry players must occur on an ongoing basis, and not only as “point in time” or procedural exercises. Given the high level of expertise among the Chamber’s diverse global membership, the Chamber would welcome continued ongoing

¹ Capitalized terms used in this comment letter have the meaning ascribed to them in the Consultation Report unless otherwise noted.

² The Consultation Report defines Crypto-Asset Trading Platforms broadly as “a facility or system that brings together multiple buyers and sellers of crypto-assets for the purpose of completing transactions or trades” and distinguishes CTPs from Trading Venues which are “traditional exchanges, alternative trading systems (ATs), multilateral trading facilities (MTFs) or other regulated trading venues.” As discussed in further detail herein, this letter is focused on CTPs that facilitate the buying and selling of crypto-asset securities only.

dialogue around these issues and would be happy to serve as a resource to IOSCO going forward.

Helpful Guidance in “Toolkits”. The Chamber believes the Toolkit guidance included in the Consultation Report is a helpful component for regulators considering the issues and risks related to CTPs. In particular, the Chamber appreciates that the language used in the Toolkit sections does not attempt to be definitive or impose rules, and instead refers to important considerations that a regulatory assessment might include. We believe this approach is desirable for at least two reasons: the necessity to preserve flexibility given the variations in authority and responsibility among IOSCO Member regulators, and a recognition that attempting to impose rules to prompt regulatory action has the potential to quash innovation and the continued evolution of crypto-assets and CTPs. Reiterating our first general point above, striking the correct balance between regulation to protect investors and consumers and creation of a global environment that fosters innovation in this technology is critical.

Meaningful industry dialogue and input will be key to creation of effective and appropriate regulatory regimes for CTPs. As we mention throughout, engagement with all stakeholders to understand the technology and its practical use will be of critical importance to developing effective global standards for regulation of CTPs. The Chamber looks forward to engaging in ongoing dialogue on these issues and providing input, expertise, and feedback as appropriate.

Not all crypto-assets are securities; regulatory clarity is essential. The Chamber encourages IOSCO to rely on the core principles to develop internationally recognized guidelines for the regulation and oversight of CTPs that trade crypto-asset securities to foster innovation and growth in the blockchain space. Regulatory clarity is needed in crypto-asset markets that by their nature transcend geographic boundaries and are global in scope. A crypto-asset that may be considered a security in one jurisdiction may not be considered a security in another. Similarly, securities regulators in some jurisdictions may have broad oversight of securities as well as other crypto-assets, while regulatory oversight in other jurisdictions may be limited to securities. It is critical that the global regulatory community recognize these different approaches to regulation of crypto-assets in working towards regulatory clarity for both crypto-asset securities and crypto-assets more generally. Specifically, we believe that the IOSCO guidance in this area should be specific to crypto-asset securities and CTPs that trade crypto-asset securities and recognize that transactions in non-security crypto-assets should not be subject to securities laws, although there are other regulatory regimes that likely apply depending on the jurisdiction.

Innovators need actionable regulatory guidance, developed with industry input and an understanding of the various crypto-asset platforms and uses, regarding the standards and factors that securities regulators believe are appropriate for the evaluation of whether a crypto-asset constitutes a security. In addition, clear statements that certain crypto-assets, such as bitcoin, ether, XRP, and similar tokens, are not considered, in and of themselves, to be securities. Currently, determinations are made on a case-by-case and jurisdiction-by-jurisdiction basis for individual crypto-assets, and in certain jurisdictions those determinations may change over time as the characteristics of the platform on which a given crypto-asset is

used change.

As a result, many crypto-asset distributions that are vital to projects where companies are attempting to create innovative solutions using blockchain have been jeopardized by the existing regulatory uncertainty. Creating clear guidelines and space for crypto-assets to exist on a global scale under appropriate guidelines would benefit innovation and minimize fraudulent activities.

We appreciate that the Consultation Report does not include an analysis of the criteria used by any individual regulatory authority to determine which crypto-assets fall under their jurisdiction. However, the threshold question of regulatory jurisdiction and whether individual crypto-assets are securities or not is also critical with respect to how CTPs are regulated and by whom. CTPs facilitating transactions in securities will likely fall squarely within the jurisdiction of the relevant securities regulator. On the other hand, CTPs facilitating transactions in non-security crypto-assets may fall under the authority of the securities regulator, a different regulator, or be unregulated from a prudential perspective depending on the approach in a particular jurisdiction. The IOSCO guidelines going forward should be focused on CTPs that offer crypto-asset securities.

Regulation should be technology neutral. Crypto-asset securities have the same legal character as traditional securities. The difference between a traditional security and a crypto-asset security is in the technology used to represent the rights conferred to the owner of a security. The move to a digital representation of those rights is the next step in a natural evolution from paper certificates, to book entry databases, to central depository records and beneficial ownership, and now to securities represented in digital form on a blockchain-based system. Although new technology is being used to represent the security, the legal character and regulatory treatment of the security should remain the same. Certainly, there are technological issues that need to be addressed in order for crypto-asset securities to meet the applicable regulatory standards in a given jurisdiction, but those are technological challenges that do not bear on the appropriate legal categorization or treatment of crypto-asset securities. Accordingly, it is our view that IOSCO should approach these issues in a technology neutral way, as it has done in the past in considering other regulatory issues with technology components.

Similarly, we do not believe that the technology underlying CTPs should fall within the ambit of securities laws. The blockchain protocols upon which certain CTPs are built should not be subject to the same rules and regulations as the CTPs themselves. These protocols simply enable a wide range of transactional activity to occur. Transactions in crypto-assets and crypto-asset securities are small subsets of the transactions occurring in applications built on top of blockchain protocols. For instance, securities transactions are settled on Ethereum blockchain, but it is not, and should not (and possibly could not), be regulated as a CTP or securities intermediary. We appreciate that the Consultation Report distinguishes blockchain protocols and the technology underlying crypto-assets from CTPs and crypto-assets themselves. We believe this is the appropriate approach when it comes to blockchain protocols underlying CTPs and again believe that IOSCO should remain technology neutral and focus on establishing guidelines specific to CTPs that perform exchange activity related

to crypto-asset securities.

Specific Comments

Comments on Relevant IOSCO Principles and Regulatory Approaches (Chapter 3)

IOSCO Principles

The Chamber believes the IOSCO principles provide helpful guideposts for the development of global regulatory guidance with respect to CTPs. However, we caution against the application of the identified principles to non-security crypto-assets. Such an application could be viewed as an attempt to apply any such guidance to non-security assets that might fall outside the scope of authority of most securities regulators. This might have negative unintended consequences such as hindering the transferability of non-security crypto-assets where such transferability is critical to the development and operation of decentralized systems. The Chamber supports efforts to develop regulatory guidelines based on the relevant IOSCO principles that are specific to CTPs that offer crypto-asset securities.

Regulatory Approaches

We appreciate that the survey results identify a variety of regulatory approaches with respect to CTPs and applaud IOSCO for identifying the relevant issues and risks as a first step to developing global guidance for regulatory frameworks that will effectively foster innovation and protect investors and consumers. As discussed above, to the extent possible, regulatory clarity, in consultation with all stakeholders, will meet the dual goals of encouraging innovation and fostering growth and investor and consumer protection.

Comments on Key Considerations (Chapter 4)

Below we provide comments specifically addressing some of the key considerations outlined in Chapter 4 of the Consultation Report. We note that our comments are specific to CTPs that trade crypto-asset securities consistent with the approach to this area set out above and our view of the appropriate scope of regulatory authority of the IOSCO Member organizations.

Access to Crypto-Asset Trading Platforms

The Chamber supports regulatory efforts to consider the issues and risks related to participant access to CTPs that offer crypto-asset securities. Establishing clear access criteria and participant on-boarding processes at CTPs that offer crypto-asset securities is important to support the gatekeeping role that will help to prevent misuse of CTPs and is consistent with existing regulatory requirements in many jurisdictions and with recent recommendations from the Financial Action Task Force, as noted in the Consultation Report.

These components of an effective access process are even more important where non-intermediated³ access is provided to retail customers to prevent potential misuse of a CTP. A typical Trading Venue will rely on a regulated intermediary to perform the legally required on-boarding and make suitability determinations with respect to retail investors accessing the trading venue. CTPs that allow for direct retail access must take care to establish appropriate customer on-boarding policies and procedures as well as suitability reviews for new customers if they are not relying on a third-party intermediary that might perform those functions in a traditional arrangement.

Safeguarding Participant Assets

Custody of crypto-asset securities is an important aspect of customer protection. The SEC and FINRA in the United States recently highlighted concerns related to custody of digital securities in a joint statement specific to the customer protection rule applicable to broker-dealers.⁴ Given that many CTPs that provide non-intermediated access to retail customers perform the function of exchange and broker-dealer, this guidance is particularly relevant.⁵ With crypto-assets, there is no object stored physically anywhere in the world; rather records are maintained on a blockchain showing transactions and transfers of ownership that have occurred by sending and receiving crypto-assets via a software wallet using public-private key encryption. The technologies and methods used to maintain ownership and to safeguard these assets are constantly evolving. For example, the application of multi-signature⁶ technology adds a layer of complexity to custody requirements for these assets because the keys necessary to execute a transaction may be in multiple physical locations. Public and private keys are analogous to a user name and password where the public key, like a user name, may be viewed by anyone and the private key, like a password, is stored privately and is used in conjunction with the public key to access the software. Regulators and policymakers will need to understand the ways in which ownership of these new assets is currently reflected and be mindful of the evolution of the technologies as they consider guidance to market participants on the application of existing regulatory requirements surrounding custody⁷ to innovative technologies.

³ We note that the Consultation Report refers to intermediated and non-intermediated access to CTPs. We interpret intermediated access to refer to accessing a CTP through a regulated entity such as a broker dealer or investment advisor in the United States. We interpret non-intermediated access to refer to direct retail access to a CTP without the involvement of a regulated intermediary.

⁴ *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (the “*Custody Joint Statement*”), Division of Trading and Markets, U.S. Securities and Exchange Commission and Office of General Counsel, Financial Industry Regulatory Authority (July 8, 2019).

⁵ It is important to distinguish between performing the function of a broker-dealer in the context of a non-security crypto-asset from acting as a broker-dealer with respect to a crypto-asset security. In the former situation, at least in the United States, the securities laws do not apply to the performance of that function and the customer protection rule and the Custody Joint Statement are not directly applicable, but both may be instructive with respect to best practices regarding customer protection. In the latter situation, the customer protection rule and the Custody Joint Statement are directly applicable.

⁶ Multisignature, or “multisig” refers to a cryptographic functionality within public key infrastructure that requires more than one private key to complete a transaction. Many companies offer multisig wallets, where, for example, a 2-of-3 multisig wallet would require 2 out of 3 private keys, usually held separately, in order to authorize a transaction.

⁷ See *Reserves and Custody of Securities*, 17 C.F.R. § 240.15c3-3 (2018); see also *Custody of Funds or Securities of Clients by Investment Advisors*, 17 C.F.R. § 275.206(4)-2 (2018).

Any possession or control standards for crypto-asset securities need to take into account the technological reality of how these assets are managed, and satisfactory control considerations should focus, for example, on whether the crypto-asset is properly cryptographically protected and that adequate cybersecurity practices, specific to DLT, are maintained. As regulators continue to think through these issues, the Chamber encourages an open-minded approach with respect to what can constitute possession or control and who can provide custody of crypto-assets, and for regulatory guidance that fosters a pro-growth environment when interpreting these and other issues that arise as blockchain technology develops.

Market Integrity

The Chamber believes there are two relevant dimensions to providing market integrity in CTPs: the actions that CTPs take in terms of monitoring and oversight, and the monitoring and oversight of CTPs by regulators. Clear regulatory guidelines with respect to both dimensions would enhance market integrity.

Members of the Chamber are creating powerful blockchain analytics tools which can be effective in tracing crypto-assets throughout the blockchain. Certain CTPs are incorporating such tools into their surveillance protocols as well as providing training on these tools to members of their internal compliance team. There are also mainstream monitoring tools that provide surveillance capability to traditional financial organizations that are being adapted to FinTech and crypto-asset related businesses.

On the second dimension, the application of regulatory surveillance systems may be useful in some instances and the development of such tools as they relate to crypto-asset securities should take into consideration the types of data that are publicly available, and the ability to automate certain oversight functions. Industry leaders in blockchain analysis technologies are already emerging, and it will be of great importance to work with such companies, in addition to consulting with the industry, to ensure that these technologies are appropriately leveraged for efficiency and effectiveness. Any guidance related to regulatory surveillance should promote systems that are robust and also flexible enough to interface with data sets that are built in accordance with different technological standards. It is important to note that blockchain-based systems provide excellent audit trails that any such regulatory surveillance system may benefit from.

It will be equally important to provide guidance regarding the boundaries of the application of such oversight, which relates back to the need for comprehensive guidance in relation to the taxonomy of crypto-asset securities, as described above. Similarly, it will be important to clearly define exclusions lest there be an expectation that regulators are tasked with monitoring a volume of data that does not present a risk commensurate with such monitoring (such as in-game gold, or rewards points).

Relatedly, IOSCO might consider how blockchain-based books and records might aid intermediaries and CTPs, consider providing guidelines for establishing rules to allow such parties to maintain blockchain-based books and records, and encourage regulators to adopt rules to that effect.

Price Discovery

Transparency of trading is critical to fairness and market efficiency and we agree that transparency is an important issue to monitor. Currently, the crypto-asset securities market is in its early stages and we provide some high-level thoughts to consider regarding potential future issues with respect to price discovery.

When considering price discovery, it is important to keep in mind that crypto-asset securities trading will be a global activity. Pricing may not be set in one marketplace, but will likely be set globally, especially early on. In addition, the activity that is confirmed to the public blockchain upon which a crypto-asset security is issued should be taken into consideration where possible. This may include assessing the volume of trading activity and the rates at which a crypto-asset security has been traded for other crypto-asset securities (which is possible in some cases without the use of an intermediary). In such instances, the information is publicly accessible and easily verifiable. It may even be possible and desirable to automate some information aggregation and publication processes.

Where transactions or transaction information are not publicly available, IOSCO should consider whether clear guidelines should be developed to help platforms report complete and accurate information, including how such information should be calculated and disclosed. It may be possible to automate many of the discovery functions based on predefined inputs from platforms at regular intervals.

We recommend working closely with the industry to understand the nuances of pricing and price disclosures as you continue to monitor this issue. This may include looking at transactions that take place via over the counter (OTC) units connected to platform providers, the impact of platform providers in diverse jurisdictions, as well as traditional futures markets that have implemented products related to crypto-assets.

Clearing and Settlement

DLT systems can bring enormous benefits to clearing and settlement of transactions. Where transactions are confirmed on a blockchain, settlement can be automated and almost instantaneous, creating an immutable public record of the settled transaction, and allowing for transactions that involve fractions of a unit or share. Taken together, these characteristics indicate that there are significant advantages that can be offered over traditional settlement methods. Guidance on clearing and settlement using blockchain-based systems should take into consideration these benefits and seek to address regulatory concerns in a manner that will allow this technology to be implemented in order to realize these benefits.

In addition to the above benefits, new models for digital identity and digital transaction security will dramatically enhance the security for these types of trades. CTPs should be encouraged to support a model where the trade instruction, which is digitally signed for all crypto-asset securities trades by the user's private key, also include: 1) evidence that the system protected the private key, 2) evidence that compliance requirements were met, and 3) integration of privacy and protection of personal identifiable information.

It is important that blockchain innovation is given space to evolve generally and specifically in relation to online transactions, as paper trade instructions are quickly becoming irrelevant and outdated. CTPs should be encouraged to support digitally signed instructions that are built on secure technology.

Regulators should form a working group to further explore such a solution with the aim of defining standards so that dealers, brokers, platforms, custodians, and clearing agents could participate in roles similar to how they currently operate.

Conclusion

The Chamber and its members appreciate the opportunity to contribute our thoughts on these important issues. Promoting efficient and fair CTPs through regulatory guidance will help this nascent industry evolve in a positive way and will encourage the innovative development and use of blockchain technology.

In all cases, regulation and legislation designed to support and strengthen CTPs offering of crypto-asset securities should be developed in close consultation with industry and supported by detailed and transparent guidance and policy interpretations that can be used by industry in all stages of business from strategy to execution.

We would be happy to provide additional information or answer any questions that you might have in relation to this submission. It is our sincere hope that this consultation is the first in an ongoing dialogue with the industry and that we may serve as a valuable partner in that consultation process.

The Chamber looks forward to ongoing and collaborative dialogue with IOSCO going forward. Should you have any further questions or wish to discuss our comments, please do not hesitate to contact us.

Respectfully Submitted,



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