By Email Submission

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International Organization of Securities Commissions (IOSCO)
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RE: CCI's Public Comment on IOSCO's Consultation Report on Policy Recommendations for Crypto and Digital Asset Markets

The Crypto Council for Innovation ("CCI"), a global alliance of industry leaders in the digital assets space, appreciates the opportunity to provide feedback on the IOSCO "Policy Recommendations for Crypto and Digital Asset Markets" ("the Proposal"). CCI members span the crypto ecosystem and include some of the leading global companies and investors operating in the industry. CCI members share the goal of encouraging the responsible global regulation of crypto to unlock economic potential, improve lives, foster financial inclusion, protect security, and disrupt illicit activity. Achieving these goals requires informed, evidence-based policy decisions realized through collaborative engagement between regulators and industry. It also requires recognition of the transformative potential of crypto in improving and empowering the lives of global consumers. CCI and its members stand ready and willing to work with IOSCO and its members to accomplish these goals and ensure that the most transformative innovations of this generation and the next are best allowed to flourish around the world.

To this end, we agree with the overarching goal of Recommendation #1 (Common Standards of Regulatory Outcomes) in the Proposal and support the development of regulatory frameworks that enhance investor protection and market integrity. We also recommend that the final Proposal explicitly recognizes the benefits of digital assets and the importance of promoting ongoing innovation in this space, while taking an objective assessment of any potential risks and how they should be mitigated. We request that IOSCO specifically consider benefits such as expanding financial access and inclusion, upgrading financial infrastructure, improving transactional efficiencies and reducing costs, unlocking programmable money, and enhancing privacy, in arriving at its recommendations. A failure to consider the benefits of responsibly facilitating crypto innovation may result in overly restrictive regulation that risks stifling its appropriate development and may run counter to IOSCO's ultimate goal of promoting regulatory consistency.

Against this backdrop, we provide feedback below on key topics that cut across several of the Proposal's Recommendations and questions. Our feedback centers on advancing regulatory frameworks that enhance both investor protection and market integrity while fostering

responsible innovation built upon crypto technologies. Specifically, we address the following topics and recommendations:

- **Vertical Integration**: While we agree that vertically integrated service providers should adhere to appropriate operational and governance requirements, we respectfully urge IOSCO to recognize the significant benefits to investors and the broader market from Internet-enabled integration and caution against overbroad activity restrictions. We also caution against legally mandated disaggregation of services, where doing so might increase concentration risk and systemic risk (e.g., in the areas of custody or clearing) or where the unique attributes of blockchain technology otherwise mitigate risks of concern (e.g., by providing transparency into asset holdings or reducing counterparty risk).

- **Market Surveillance, Fraud Detection & Insider Trading**: We strongly support measures to enhance market integrity and prevent fraud, manipulation, and insider trading. We encourage IOSCO and its members to engage with responsible industry participants who are developing and adopting regulatory compliance technologies to accomplish these objectives and to foster cross-industry surveillance efforts. We further encourage regulators to invest in internal staff education on crypto technologies to better understand how such technologies can be leveraged to enhance compliance, detect fraud and manipulation, and improve market operations.

- **Crypto Asset Disclosures**: While we strongly support proper disclosure to investors to allow for informed decision-making and price discovery, we encourage IOSCO to tailor such requirements based on the nature of the crypto assets involved and the proper role of an intermediary. To this end, disclosures related to crypto assets whose value is not dependent on a core management or development team are likely to only need an asset-based disclosure regime, whereas crypto assets whose value is dependent on a core management or development team may need a more robust disclosure regime that relates to both the asset and its issuer. Ultimately, where significant information asymmetries may arise, more traditional forms of disclosure may be appropriate. Relatedly, we would recommend against mandating “verifiable, continuous, and detailed disclosures from asset issuers regarding the asset(s) and issuer’s business (including financial statements),” particularly where such disclosures have little or no relevance to the crypto asset in question.

- **Stablecoins**: While we agree with the importance of proper regulatory frameworks needed to govern stablecoins, including disclosures and governance requirements, we recommend that IOSCO recognizes the broader benefits to payments innovation that stablecoins present and acknowledge that policymakers in leading jurisdictions, including the U.S., E.U., and Japan, do not treat payments stablecoins as securities.

- **Custody & Self-Hosted Wallets**: We support tailored operational and governance requirements for custodians and further recommend that IOSCO recognize and contemplate the benefits to investors of a broad range of custody solutions, including

exchange-based and self-hosted wallets. Tailored requirements should consider the scope of such solutions available in the marketplace.

DISCUSSION

I. **Topic #1: Vertical Integration** (Recommendations #2 and #3; Questions 3-5)

Recommendations #2 and #3 in the Proposal are predicated on the concept of "vertical integration," whereby an entity or platform may "engage in multiple functions and activities under 'one roof.'"

It is common for traditional intermediaries to offer multiple service lines for the benefit (and frequently at the demand) of investors and market participants, including many of the services listed in the Proposal. Of course, traditional intermediaries also provide disclosures to inform investors of potential conflicts and to have in place appropriate policies and practices to mitigate conflicts or other risks that arise. To the extent that intermediaries in the crypto space similarly provide a range of services that investors demand, regulators should neither treat them more punitively, nor view their activities with skepticism.

Much of the vertical integration in the crypto asset industry is a natural result of platforms leveraging the benefits of new technologies in order to more efficiently and effectively offer a broader range of services. As we have seen across industrial sectors, internet and mobile technologies have enabled the development of scalable platforms that are capable of disintermediating inefficient gatekeepers and manual processes. When combined with increasingly powerful cloud and computing technology, modern platforms can automate decision-making, rapidly mitigate risks, reduce costs, and expand investor and consumer access to opportunities—as evidenced by digital investment advisory, crowd-investing, and digital lending platforms. These dynamics are further enhanced in the context of crypto, where open and interoperable blockchains allow market participants to engage in a broad range of economic activities previously subject to siloed (and costly) gatekeepers.

In line with the IOSCO Recommendations, we agree that any responsible market intermediary should have in place "effective governance and organizational arrangements, commensurate to its activities, including systems, policies and procedures that would, amongst other things, address conflicts of interest, including those arising from different activities conducted, and services provided . . ." However, we strongly recommend that IOSCO remove any negative connotations associated with vertical integration. Vertical integration may often present significant potential benefits to investors and the overall operation of markets, including greater competition and innovation, enhanced transaction efficiencies, improved quality of operations, and greater consumer choice and offerings.[1]

[1] *See generally* Copenhagen Economics, *The Economic Rationale for Vertical Integration in the Tech Sector* (Nov. 2020), available at https://copenhageneconomics.com/wp-content/uploads/2021/12/copenhagen-economics-the-economic-ra

Additionally, vertical integration in crypto assets specifically can bring about unique benefits and mitigate traditional risks as a result of the underlying technology. In other words, blockchain technology itself may mitigate traditional risks. For example, during the financial crisis, opacity in terms of certain financial firm exposures triggered market-wide uncertainty, when blockchains could have reduced such risk by offering real-time visibility into firm holdings. Further, a market that operates on real-time settlement eliminates the counterparty credit exposure that would otherwise exist because of the delay between the moment when a trade is confirmed and the moment when ownership of the asset is transferred. The elimination of counterparty credit risk significantly strengthens the operations of trading platforms in the crypto markets, eliminating a major vulnerability that traditional finance exchanges usually have to guard against. The elimination of this risk frees up assets that would have otherwise served as collateral for more efficient use. Real-time settlement also has the effect of alleviating the amounts of capital broker-dealers must hold in reserve, adding liquidity and efficiency to the system. These are significant transparency and operational risk benefits, and they therefore require objective consideration of whether the vertical integration of market infrastructure and functions should be fostered in the blockchain context, rather than curbed.

Against this backdrop, regulators and policymakers should objectively consider vertical integrations as having the potential to empower investors with greater choice and opportunity, while fostering overall efficiency and transparency. In light of the potential benefits of vertical integration, we would therefore suggest that IOSCO avoid any approach that uniformly disapproves of vertical integration. We suggest, instead, that IOSCO's approach be tailored to the specific risks posed by vertical integration in specific circumstances. Where the risks of vertical integration in the blockchain resemble those posed by traditional finance, we recognize that similar regulatory approaches may be considered. But where vertical integration can afford systemic benefits or reductions in risk, we would respectfully urge IOSCO to take a more nuanced approach that acknowledges the specific technological context and its unique attributes. This is not to suggest that vertical integration is wholly devoid of risk — but such risks are capable of being adequately addressed by established mitigation measures, such as disclosure requirements, information walls, appropriate capitalization and supervision, and specific governance structures.

More specifically, and as a further example of deploying known mitigation tools, well-constructed information barriers can minimize opportunities for improper use of information. Clear articulation of the duties that employees have to customers can clarify whose interests must be considered. Mandatory disclosures and the inherent transparency of the blockchain can keep the market and regulators apprised of inter-company relationships. And simply-written disclosures should help customers understand any potential conflicts of interest, while periodic review and testing of policies can ensure the on-going adequacy and effectiveness of conflict mitigation measures.

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tionale-for-vertical-integration-in-tech.pdf; OECD, *Vertical Mergers in the Technology, Media and Telecom Sector* (June 7, 2019), available at https://one.oecd.org/document/DAF/COMP(2019)5/en/pdf.

Underscoring this risk-based approach to vertical integration, we also caution IOSCO against recommending the legally mandated disaggregation of services where such services might increase concentration risk and systemic risk. For example, in the crypto asset markets of today, where custodial services vary widely in availability and scope, mandating the disaggregation of specific functions may lead to the concentration of crypto assets in relatively few entities. Accordingly, we would suggest that legally mandated disaggregation should be strongly disfavored.

Similarly we urge IOSCO to remove references in the second paragraph of Recommendation #2 to prohibitions or blanket restrictions on offering certain services and instead apply well-established principles that require identifying, disclosing, and mitigating identifiable conflicts of interest. A failure to do so may result in certain jurisdictions unevenly and over-broadly applying such prohibitions and restrictions, thus stifling innovation and efficiency without helping market participants.

II. Topic #2: Market Surveillance, Fraud Detection & Insider Trading

(Recommendations #8, #9 and #10)

CCI strongly supports Recommendations #8, #9, and #10 in the Proposal focused on detecting and preventing potential fraud, market manipulation, and insider trading and dealing in crypto markets. To this end, we agree that regulations should require market surveillance of intermediaries involved in facilitating trading activity, police fraud and market manipulation, and strictly prohibit insider trading. Our additional recommendation to IOSCO and its members is that regulators should engage with the industry to understand the range of tools and solutions deployed in the market to further these core compliance objectives. In addition to external engagement, we encourage regulators to provide staff with internal education and access to crypto technologies so that they can gain real-world experience capable of informing policy and market oversight. To this end, understanding the available tools, technologies and solutions is necessary to fine-tune regulatory requirements for intermediaries and optimize oversight and compliance efforts.

For example, many CASPs leverage market surveillance technologies that are capable of detecting anomalous trading activity that may indicate fraud or manipulation. By engaging constructively with the industry to understand these technologies, regulators will be better positioned to tailor relevant requirements. They will also better understand the nature of digital asset trading markets and unique fraud typologies that may be distinct from traditional markets.

Regulators should also consider innovative ways they can support or supplement surveillance efforts, including by working across jurisdictions to create or expand cross-market surveillance frameworks. For example, regulators, self-regulatory organizations, and exchanges established the Intermarket Surveillance Group ("ISG") "to provide a global network for the sharing of information and the coordination of regulatory efforts among exchanges . . . to address potential intermarket manipulation and trading abuses."[2] IOSCO should explore

[2] *See* Intermarket Surveillance Group, available at https://isgportal.org/.

application of such a framework to the digital asset space in order to promote cross-jurisdictional market surveillance collaboration.

III. **Topic #3: Crypto Asset Disclosure** (Recommendation #6)

CCI agrees that proper disclosure of information is critical to help investors make informed decisions and facilitate price discovery. To this end, we are supportive of the spirit of Recommendation #6.

As a general point, CCI encourages IOSCO to consider the broad universe of different categories of tokens that vary by design, governance, and backing. For example, the variety of stablecoins includes permutations of endogenous, exogenous, overcollateralized, and uncollateralized stablecoins. It is critically important to examine these categories individually and emphasize that more than a one-size-fits-all regulatory approach to disclosure will be needed. To this end, CCI recommends adoption of a principles based disclosure regime focused on achieving a consistent set of outcomes, but with the necessary tailoring to reflect the specific nature of the particular asset category being considered. In line with IOSCO Recommendation #6, the required outcome is providing investors with appropriate information to make informed decisions and assist price discovery; as evidenced by existing different disclosures regimes for assets (e.g., commodities and securities), the nature and content of those disclosures, however, will properly vary based on the nature of the asset.

More specifically, when considering appropriate disclosure requirements, CCI urges IOSCO to consider important distinctions between crypto assets based on their link to a core management or development team. Where the value of a crypto-asset is dependent on a core management or development team, transactions of the crypto-asset are likely to require similar protections as transactions in securities. Assets that are securities are commonly subject to disclosure laws and requirements imposed on the issuer—these requirements are predicated on the notion that the management team of an entity issuing a security holds asymmetric information about the plans (and effectively value) of the enterprise that require proper public disclosure to inform investment decisions and facilitate price discovery.

On the other hand, where the value of a crypto-asset is not dependent on a core management or development team, transactions of the crypto-asset are unlikely to require similar protections as transactions in securities and may instead look to disclosures modeled on commodities regimes. Commodities are not controlled by an identifiable singular management team, and, accordingly, there is no affirmative disclosure requirement on the equivalent of an "issuer" since there is no issuer. The distinction between these different types of assets is meaningful in the context of disclosure and requires careful attention.

Further, even where an identifiable issuer may initially exist for a crypto asset, we would caution against mandating "verifiable, continuous, and detailed disclosures for asset issuers regarding the asset(s) and issuer's business (including financial statements)." In many cases, such disclosures may have little or no relevance to the crypto asset in question (especially given

later stages of development), therefore serving to add complexity and regulatory burden on the asset without enhancing its transparency or uniformity. In our view, tailored disclosures that take into account the specific features and attributes of each crypto asset is more appropriate.

We also suggest that regulators minimize disclosure obligations on intermediaries facilitating trading in crypto assets that do not present the same information asymmetry risks as securities. Intermediaries may be limited in accessing verified or verifiable information about such assets, making them inappropriate disclosure agents in such circumstances. Disclosure regimes in such cases should be modeled on the types of disclosures required in commodity markets and futures and derivatives markets predicated on underlying commodities. Put differently, a one-size-fits-all disclosure framework should not be assumed when dealing with potentially very different types of assets or financial instruments.

IV. **Topic #4: Stablecoins** (Guidance)

CCI believes strongly in the transformative potential of stablecoins for use in payments and has been engaging constructively with policymakers across global jurisdictions to craft appropriate regulatory frameworks.

The term “stablecoin” in this context may be unhelpful for policymakers as it is a broad term and one that may not always be comparable across jurisdictions or confer regulatory meaning. A token that is pegged one-to-one to a global fiat currency, for example, has a different profile from one that is pegged to a basket of other crypto assets with regards to risks, benefits, and use cases. Many regulators have accordingly adopted a more nuanced approach to stablecoins or have stepped away from the term altogether. For example:

- In the EU, MiCA recognises “asset referenced tokens” with clear definitions of what the stabilizing asset is.[3]
- In the UK, while the term stablecoin is still used, current legislation defines it as a token that is fiat-backed and used in payments.[4]
- In Japan, stablecoin regulation differentiates between digital money type stablecoins, which are issued at a price that is linked to the value of a legal currency and are redeemable in the same amount as its issue price, and crypto asset type stablecoins, which are stablecoins that are not digital money type stablecoins.

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[3] Under MiCA, “asset referenced token” means “a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies[.]” Parliament and Council Regulation 2023/1114, 2023 O.J. (L 150) 80.

[4] The UK Law Commission defines “stablecoins” as “crypto-tokens with a value that is intended to be pegged, or tied, to that of another asset, currency, commodity or financial instrument. The peg might be based on assets held by the issuer, or on a mathematical algorithm and is generally intended to remain on a stable (often 1:1) basis over time.” *Final Report: Digital Assets,* U.K. Law Comm’n xiv (2023), https://www.lawcom.gov.uk/project/digital-assets/.

While CCI acknowledges IOSCO's drive for greater regulatory consistency, we would recommend that the final Proposal place greater emphasis on clear definitions and taxonomy in this space, which will allow for a more nuanced and thoughtful debate about the current and future role of different stablecoins. Specifically, a clear taxonomy may be useful in addressing three specific concerns we have about the Proposal.

First, the Consultation Report expresses skepticism regarding the use of stablecoins for payments outside of crypto trading, lending, and borrowing activities. To date, development and experimentation with stablecoins has typically occurred within crypto environments. However, creating appropriate regulatory frameworks for stablecoins will drive the broader use and adoption of certain types of stablecoins—an approach which CCI wholeheartedly supports. IOSCO should consider an appropriately flexible regulatory framework for stablecoins, which will permit stablecoin issuers and users to pursue a broad set of use cases, including retail payments, and thus maximize stablecoin utility. Any stablecoin regulatory framework should not, accordingly, constrain the future development of stablecoin models and applications.

Second, the Consultation Report comments that stablecoins may constitute a security. While it is technically possible that a stablecoin could be designed in a way that constitutes a security, the vast majority of payments-oriented stablecoins are not securities. We note that many financial regulators do not view stablecoins through the security prism. For example:

- In the United States, SEC staff has previously suggested that simple 1:1 pegged dollar-based stablecoins are not securities. Recent legislative proposals in the U.S. similarly do not contemplate payments stablecoins as securities.[5]
- The EU's recent MiCA legislation crafts a non-securities based framework for stablecoins, as does the recent framework being established in Japan.[6,7]
- UK policy efforts similarly do not treat stablecoins as securities.[8]

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[5] SEC staff have clarified that the question of whether a stablecoin is a security depends on a facts and circumstances analysis including the nature of the instrument, the right it conveys, and how it is offered and sold. *SEC FinHub Staff Statement on OCC Interpretation,* U.S. SEC. & EXCH. COMM'N FINHUB STAFF (Sept. 2020), https://www.sec.gov/news/public-statement/sec-finhub-statement-occ-interpretation#_ftn1.

[6] EU-Lex, *MiCA regulation*, May 31, 2023 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1114&pk_campaign=todays_OJ&pk_source=EURLEX&pk_medium=TW&pk_keyword=Crypto%20assets&pk_content=Regulation&pk_cid=EURLEX_todaysOJ

[7] JFSA, *Regulatory Framework for Crypto-assets and Stablecoins*, September 2022, https://www.fsa.go.jp/inter/etc/20220914-2/02.pdf

[8] HM Treasury, *Future financial services regulatory regime for cryptoassets,* February 2023, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1133404/TR_Privacy_edits_Future_financial_services_regulatory_regime_for_cryptoassets_vP.pdf

Given the foregoing approaches by prominent global financial regulators, CCI strongly urges IOSCO to remove this statement to avoid an ambiguous reference to outlier cases where a stablecoin might implicate securities laws. Marginal cases of stablecoins that do not fit the dominant norm should not serve to introduce the securities laws where they do not appropriately play a role. We further recommend that regulators and policymakers craft tailored frameworks for stablecoins that fit their unique elements and applications. As noted above, this is the current approach most prominent financial regulators are taking—and it is an approach that should recognize the transformative potential for stablecoins to create consumer-centric competition in payments, which will reduce costs, increase settlement times and efficiencies in the payments system, and advance consumer privacy.

V. Topic #5: Custody and Self-Hosted Wallets (Recommendations #12-#17)

Safeguarding customer assets is critical for trust in crypto markets and upholding market integrity. CCI supports Recommendations #12-#17 in the Proposal and works constructively with global regulators in crafting frameworks that include the covered principles and recommendations associated with custody best practices.

However, the Proposal misses the importance and critical role of self-hosted wallets, which many investors choose as their preferred custody solution. Self-hosted wallets are a key element of the crypto infrastructure—they are associated with open, public blockchains and empower individuals to manage their own digital assets. Retail investor participation in the crypto asset industry could be severely adversely affected without them. To this end, the Proposal should explicitly acknowledge the role of self-hosted wallets and consider how the accompanying recommendations may apply in their context.

For example, the Proposal should make clear that it is appropriate for a CASP to send customer assets to a self-hosted wallet at the direction of the customer. The Proposal should further consider what disclosures should be required and how their content may differ for a customer seeking to utilize a self-hosted wallet. A failure to address these topics may create ambiguity regarding the status and treatment of self-hosted wallets in the custody context.

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The comments above are a selection of our more prominent views regarding the Proposal. Our comments notwithstanding, we believe the Proposal is an important step in the right direction—namely, the consideration of the burgeoning global crypto industry on its own terms, rather than through the prism of traditional financial markets regulation.

With a view to further refining the Proposal to serve the needs of the crypto industry and its varied and growing investor base, we request that IOSCO review and consider the comments presented in this letter. We would be very happy to engage further with IOSCO on the development of the Proposal, and to further discuss our comments and concerns.

Respectfully submitted,

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