IOSCO's recommendations

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IOSCO's Board published its Policy Recommendations for Crypto and Digital Asset Markets as a final report on 16 November 2023. The eighteen recommendations address six areas. The first is conflicts of interest arising from the vertical integration of activities and functions within one firm or group. The others are market manipulation, insider trading and fraud, cross-border risks and regulatory cooperation, custody and client-asset protection, operational and technological risk, and retail distribution and suitability. They apply the principle that crypto-asset service providers should be regulated to the same outcomes as traditional market intermediaries. Where a single platform acts as exchange, broker, market maker and custodian, they ask regulators to require the segregation of functions, or at least of their governance.[1] A companion report of December 2023 set out nine recommendations for decentralised finance, which ask regulators to identify the "responsible persons" behind a DeFi arrangement, to apply the same outcomes to them and to address the interconnections between DeFi and the regulated sector.[2]

IOSCO's influence is exercised through its members, who are the securities regulators themselves. FINMA, MAS and the Hong Kong SFC all participated in the Fintech Task Force that drafted the recommendations. The clearest Singapore trace is in MAS's 2023 rules on segregation of customer assets, the prohibition on DPT service providers lending or staking retail customers' assets and the requirement to separate custody from other functions. The clearest Hong Kong trace is the SFC's prohibition on proprietary trading by VATPs. In Switzerland the recommendations have mostly landed where securities already applied, in FinMIA's rules for DLT trading facilities, which require the separation of trading, settlement and custody functions or their governance. For non-security tokens on a Swiss exchange the IOSCO conflicts recommendations have no statutory counterpart, which is one of the gaps a FINMA review of the DLT trading facility regime would address.[3]

Notes

1. IOSCO, Policy Recommendations for Crypto and Digital Asset Markets, Final Report FR11/2023, 16 November 2023, eighteen recommendations in six key areas: conflicts of interest from vertical integration, market abuse, cross-border risks and cooperation, custody and client-asset protection, operational and technological risk, and retail access, suitability and distribution.
2. IOSCO, Final Report with Policy Recommendations for Decentralized Finance (DeFi), FR/14/2023, December 2023, nine recommendations.

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3. Art. 73a to 73f FinMIA and Art. 58a ff. of the Financial Market Infrastructure Ordinance (FinMIO; FinfraV, SR 958.11). On the Federal Council's 2024–2026 review see Part E, Chapter V.

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