



**July 31, 2023**

**RE: Public Comment on IOSCO's Consultation Report on Policy Recommendations for Crypto and Digital Asset Markets**

The Hedera Council ("Council") is a coalition of twenty-nine (29) independent and unaffiliated organizations who collectively operate and govern a Distributed Ledger Technology ("DLT") network based on the hashgraph consensus algorithm (the "Hedera Network"). As with other DLT networks, the Hedera Network provides a network-native digital asset for application developers and users to utilize when making the micropayments required whenever they consume a Hedera Network service, i.e., whenever their application makes an API call to the network.

In the case of the Hedera Network, that digital asset is called an "hbar." This is a fundamental requirement of any public implementation of digital asset technology because anyone can use such APIs to build Web3 applications with high throughput, fair ordering, and low-latency consensus finality in seconds without relying on centralized infrastructure, but this model only works if there is a cryptographically secure method of fairly compensating all of the decentralized infrastructure providers responsible for making these services available to the public.

In the case of the Hedera Network, our coalition of independent network node operators provides these services in an environmentally and financially sustainable manner, as documented in a 2021 study from University College London.<sup>1</sup> This is partially due to the fact that the Hedera Network uses a proof-of-stake security model, which is an increasingly popular and environmentally sustainable method of securing a distributed public ledger.

We welcome the opportunity to provide the International Organization of Securities Commissions ("IOSCO") with our feedback to the policy recommendations for crypto and digital asset markets. We appreciate the efforts of IOSCO to protect purchasers of digital assets and ensure orderly markets for Hedera network users, and we understand that industry participants play a significant role in ensuring policy is effective and well implemented across the global environment in which DLT networks operate. Our response focuses on Recommendation 1 to address some gaps in the high-level approach to regulating crypto-asset activities.

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<sup>1</sup> <http://blockchain.cs.ucl.ac.uk/blockchain-energy-consumption/>

**Recommendation 1 – Regulators should use existing frameworks or New Frameworks to regulate and oversee crypto-asset trading, other crypto-asset services, and the issuing, marketing and selling of crypto-assets (including as investments), in a manner consistent with IOSCO Objectives and Principles for Securities Regulation and relevant supporting IOSCO standards, recommendations, and good practices (hereafter “IOSCO Standards”). The regulatory approach should seek to achieve regulatory outcomes for investor protection and market integrity that are the same as, or consistent with, those that are required in traditional financial markets.**

Hedera generally agrees with the scope Recommendation 1 and the potential use of both existing frameworks or New Frameworks to regulate crypto-asset activities depending on the legal structure and maturity of each jurisdiction. However, we believe the development of regulatory obligations should also provide clarity to which actors may not share liability for compliance, and that the use of existing frameworks should come with strong recommendations to enhance the framework to account for the unique characteristics of crypto-assets and crypto-asset activities.

**Question 1: Are there other activities and/or services in the crypto-asset markets which Recommendation 1 should cover? If so, please explain.**

We agree with the scope of activities and services covered by Recommendation 1; however, we emphasize that it is equally important to draw precise boundaries around actors and activities that are not covered by regulatory obligations or liable for regulatory compliance.

In recent years, we have observed valid regulatory concerns result in reactionary, misdirected attempts to expand regulatory obligations and compliance liabilities from primary actors to “facilitators” (or other similarly broad categories of actors) to account for the decentralized nature of crypto-asset infrastructure. For example, the Securities Exchange Commission of the United States recently proposed an amendment to the definition of securities “exchange” to encompass any “groups of persons” that “makes available” a protocol that can be used to provide or effectuate exchange services.<sup>2</sup>

The breadth of actors that may be argued to facilitate certain crypto-asset activities is extreme and novel, and may encompass thousands of individuals with protocol voting capabilities, developers building open-source software without rights to control how it’s purposed, passive network operators with no technical capabilities to filter or control network activity, and even internet service providers that process the communications throughout the network. Regulatory proposals that include this broad diffusion of liability significantly increases regulatory uncertainty throughout the crypto-asset industry and may not achieve outcomes beyond ineffectively increasing enforcement targets and suppressing the development and operation of this technology, which we do not believe is consistent with the mandate of regulators. We recommend that proposals to regulate crypto-asset service providers include precise definitions and include carve-outs and safe harbors for certain actors where appropriate (following the established principle of “same activity, same

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<sup>2</sup> <https://www.sec.gov/rules/proposed/2023/34-97309.pdf>

regulation”), in order to develop a complete and actionable regulatory structure in a given jurisdiction.

**Question 2: Do respondents agree that regulators should take an outcomes-focused approach (which may include economic outcomes and structures) when they consider applying existing regulatory frameworks to, or adopting new frameworks for, crypto-asset markets?**

We agree that regulators should take an outcomes-focused approach to regulation of crypto-asset activities, and that different jurisdictions may leverage existing frameworks while others will require New Frameworks to achieve their targets. However, existing regulations often fail to achieve comparable outcomes when applied to novel activities compared to their intended application to traditional activities.

We have observed failed attempts to use existing frameworks to regulate and oversee crypto-asset activities where the uniqueness of these activities are not taken into account. Again in the United States, there have been attempts to force registration of crypto assets as securities using legacy forms and requirements designed for traditional equity instruments – and such path to compliance has only resulted in the early demise of the networks and actors that have attempted to follow it.<sup>3</sup>

We recommend that any use of existing regulatory frameworks must first assess and modify the framework to incorporate consideration of the novel characteristics of crypto-asset infrastructure, such as the disintermediation of transaction processing and the decentralization of control, operation, and information asymmetry between transaction participants.

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Hedera appreciates the opportunity to comment on IOSCOs Policy Recommendations for Crypto and Digital Asset Markets. We are happy to answer any additional questions the commission may have and look forward to the continued development of the regulatory structure of crypto-asset activities with industry participation.

Sincerely,

DocuSigned by:  
  
F2198EB77B14471...  
Brett McDowell, Chair  
Hedera Hashgraph, LLC

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<sup>3</sup> <https://policy.paradigm.xyz/writing/secs-path-to-registration-part-ii>