

**Enquiries:**

[support@lexfuturus.io](mailto:support@lexfuturus.io)  
[boulevard@lexfuturus.io](mailto:boulevard@lexfuturus.io)

**Contact:**

+2348068349439



**IOSCO CONSULTATION PAPER PUBLIC COMMENT BY**

# **Lex Futurus (Nigeria)**

(MEMBER LAW FIRM OF LEX FUTURUS GROUP,  
A GLOBAL CRYPTO LAW FIRM & CONSULTANCY)

## **“Public Comment on Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms.”**

---

The Consultation Report Omitted “Issues, Risks and Regulatory Considerations” in Regards to Decentralised Exchanges (DEXs) and Also Did Not Disambiguate the Term “Crypto-Asset Trading Platforms (CTPs)”.

Though the Board of IOSCO has published this Consultation Report on Crypto-asset Trading Platforms to elicit comments from the public “on the identified issues, risks, key considerations and related toolkits”, we have highlighted a number of issues in relation to the general Consultation Report as regards the omission of Decentralised Exchanges (DEXs) as a CTP, and also, the other issue borders on the non-disambiguated term, and therefore non-descript term “Crypto-Asset Trading Platforms (CTPs)” as used in the Consultation Report context. The aim of the Consultation Report, which as stated, is to “assist IOSCO members” to evaluate “issues and risks relating to CTPs” is therefore lost as it concerns Decentralised Exchanges (DEXs) and shrouded in terminological ambiguity.

In the Consultation Report, the “Issues, Risks and Regulatory Considerations” raised are germane only to traditional Crypto-Asset Trading Platforms (CTPs) that pass for Centralised Exchanges (CEXs) and Hybrid Exchanges (HEXs). Decentralised Exchanges (DEXs) were not taken into “Regulatory Considerations”, and the “Issues” and “Risks” did not address DEXs.

The fact that the Consultation Report did not contemplate the “Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms” such as Decentralised Exchange (DEX) though it is the most technologically sophisticated improvement upon traditional Centralised Exchanges (CEXs) for crypto-assets, or even further, consider “Issues, Risks and Regulatory Considerations” in relation to a combination of “innovative technology arrangements”<sup>1</sup> like Distributed Ledger Technology (DLT) and smart contracts implemented as

Decentralised Autonomous Organisations (DAO), where rules are encoded with smart contract logic for decentral resource governance and control to facilitate crypto-asset transactions leaves a gaping hole in the Consultation Report.

### **1. Omission of Decentralised Exchange (DEX) in “Issues, Risks and Regulatory Considerations” regarding “Crypto-Asset Trading Platforms (CTPs)”**

*What are the “Issues, Risks and Regulatory Considerations” for DEXs?*

- Are DEXs, which unlike CEXs, are peer-to-peer, disintermediated, trustless and built on Distributed Ledger Technologies (DLTs) compliant with KYC/AML - CFT for crypto-asset user on-boarding processes and purposes?

- What are the legal and regulatory implications for anti-money laundering and terrorist financing concerns as related to decentralised exchange trading activities?
- What complaint management framework and investor fund protection arrangement are put in place in an emergency where crypto-asset user funds get lost because they lose their private keys, or in the event the exchange is hacked, or due to any act or force majeure?
- Have national securities regulators and international standard-setting body for securities market financial services infrastructure, contemplated the above crisis scenarios for players, participants and decentralised securities exchange trading platforms which engage in smart contract-enabled automated securities issuances?
- What are the relevant legal “Issues, Risks and Regulatory Considerations” with the censorship resistant nature of decentralised exchanges leveraged as CTPs on which securities, commodities and derivatives on commodities are issued, listed, traded, settled, cleared and custodied?
- What are the “Issues, Risks and Regulatory Considerations” with smart contract crypto-asset atomic swaps across different blockchains/Distributed Ledger Technologies(DLTs)? What clearing and settlement rules and regulations are applicable to this process?
- How are IOSCO member jurisdictions’ extant securities regulations and IOSCO documents applicable to these both novel and recondite market technology subject-matter questions?
- Who is able to list tokens which are securities, commodities and derivatives on commodities on a DEX?
- Should the listing of such tokens on a DEX be dependent on the DEX obtaining a license from the SEC, or any relevant authority such as a national securities regulator (for secondary markets, recognised market operator, etc.)?
- Will the operators of the DEX be liable if tokens are listed on the DEX without the DEX being licensed by the SEC, or any relevant authority such as a national securities regulator?

**Other issues are:**

*How does Principles of Financial Market Infrastructure (PFMI) apply to crypto-asset transaction managed by a smart contract atomic swap?*

Would the Principles of Financial Market Infrastructure (PFMI) apply to this crypto-asset transaction strategy? If yes, how? Is the PFMI made and tailored to legacy securities and derivatives transactions on the centralised, legacy financial market infrastructure? And considering the sui generis nature of crypto-asset transactions on a decentralised crypto-asset trading platform, the PFMI though may apply, would not apply mutatis mutandis, as there are new questions and issues thrown up.

More “Issues, Risks and Regulatory Considerations” found with crypto-asset transactions on a DEX are:

- zero to no liquidity,
- inadequate market participant support,
- limitation to basic features and functionalities in many cases.

## **2. The ambiguous term “Crypto-Asset Trading Platforms (CTPs)”**

In the Consultation Report the ambiguous term “Crypto-Asset Trading Platforms (CTPs)” in its semantic sense embraces “Security Token Platform”<sup>2</sup>, or a cryptocurrency exchange that trades payment tokens. The oversight function of IOSCO is in relation only to crypto-assets as “securities, commodities or derivatives on commodities”, and by necessary implication the Crypto-Asset Trading Platforms(CTPs) that trade such relevant crypto-assets stated. The ambiguity of the term raises the question whether IOSCO as an international standard-setting body exercises oversight function on banking and currency operations through its member countries. The term “Crypto-Asset Trading Platforms (CTPs)” as used in the Consultation Report should have been disambiguated for clarity and certainty of purpose.

Ambiguity of “Crypto-Asset Trading Platform(CTP)” as used in the Consultation Report  
The term “Crypto-Asset Trading Platform(CTP) is too wide, non-specific and can therefore be interpreted to refer to all Crypto-Asset Trading Platforms (CTPs) such as decentralised exchange crypto-asset platforms which do not deal in crypto-assets that are securities, commodities and derivatives on commodities. The latter set are the regulatory remit of national securities regulators, and the oversight function of the International Organisation of Securities Commissions (IOSCO).

The term Security Token Platform (STP) as used by the DTCC necessitates both the regulatory clarity and certainty for national securities regulators and international standard-setting bodies like IOSCO regarding how they should go about dealing with crypto-assets and platforms that trade crypto-assets in post-trade processing of crypto-assets that qualify as “tokenized securities”, or are security tokens.

### **General ambiguity of terms**

As seen with crypto-assets, various consultation documents, white papers, publications and other materials of international standard-setting bodies, regional bodies, financial institutions and national securities regulators from across countries and jurisdictions have used both different and varying terms like “crypto-currency”, “virtual currency”, “convertible virtual currency”, “crypto token”, “digital asset”, “virtual financial asset”, “digital coin”, “digital currency”, “virtual asset”, “digital token”, “crypto-active”, “cryptographic tokens” and a host of others.

Among other reasons, this informs why it is imperative to define the term “Crypto-asset Trading Platforms (CTP)”, before IOSCO can validly offer a clairvoyance on its mandate to advance common international regulatory standards, strengthen protection for crypto-asset investors, preserve market integrity, facilitate information sharing across CTPs globally and nationally, reduce risks inherent in the crypto-asset market on the CTPs, help with attendant technical issues that ensue in the process, even as it monitors cross-border crypto-asset investments and transactions as the growth potential continues for crypto-assets as capital market investment products and services and CTPs as the embryonic and fast-evolving modern securities market settlement system.

## **ADDENDUM**

This comment made and contributed to the IOSCO Consultation Report titled “Public Comment on Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms”, was made on the 29th July, 2019 by Boulevard A. Aladetoyinbo, Esq., Partner at Lex Futurus Nigeria. Giles Ward, Senior Policy Advisor at the IOSCO General Secretariat duly acknowledged the receipt on the 31st July, 2019.

## **REFERENCES**

### **1.**

The meaning and intendment for “innovative technology arrangements” can be found in the First Schedule and the Second Schedule of the Innovative Technology Arrangements and Services Act (ITAS Act), (CAP. 592.), Laws of Malta, made 1st November, 2018. <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12874&l=1>. Accessed at 4:00pm GMT +1, 28th July, 2019.

### **2.**

The DTCC in a whitepaper titled: “Guiding Principles for the Post-Trade Processing of Tokenized Securities” identified the three basic configurations for Security Token Platform (STP). As “tokenized securities” are variably crypto-assets, the STP is therefore a type of Crypto-Asset Trading Platform (CTP).

See: [https://www.google.com.ng/url?sa=t&source=web&rct=j&url=http://www.dtcc.com/~media/Files/Downloads/WhitePapers/Crypto-Asset-Whitepaper-2019.pdf&ved=2ahUKEwiFp9WH8tnjAhULLIAKHfA7AHMQFjADegQIBRAI&usg=AOvVaw0jhf9pdYkM\\_2W1tEKStCCu&cshid=1564396646713](https://www.google.com.ng/url?sa=t&source=web&rct=j&url=http://www.dtcc.com/~media/Files/Downloads/WhitePapers/Crypto-Asset-Whitepaper-2019.pdf&ved=2ahUKEwiFp9WH8tnjAhULLIAKHfA7AHMQFjADegQIBRAI&usg=AOvVaw0jhf9pdYkM_2W1tEKStCCu&cshid=1564396646713)

Accessed at 2:00pm GMT +1, 27th July, 2019.