alfi association of the luxembourg fund industry

Luxembourg, 23 July 2019

Comments on the IOSCO Consultation CR02/2019-May 2019 on "Issues, Risks and Regulatory Considerations relating to Crypto-Asset Trading Platforms

Introduction

The Association of the Luxembourg Fund Industry (ALFI) represents the face and voice of the Luxembourg asset management and investment fund community. The Association is committed to the development of the Luxembourg fund industry by striving to create new business opportunities, and through the exchange of information and knowledge.

Created in 1988, the Association today represents over 1,500 Luxembourg domiciled investment funds, asset management companies and a wide range of business that serve the sector. These include depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax advisory firms, auditors and accountants, specialised IT and communication companies. Luxembourg is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg domiciled investment funds are distributed in more than 70 countries around the world.

We thank the Board of the International Organization of Securities Commissions (IOSCO) for the opportunity to participate in this consultation on Issues, Risks and Regulatory Considerations relating to Crypto-Asset Trading Platforms.

Comments on the consultation

Systemic Risk:

The Consultation Report mentions that IOSCO has three core objectives: investor protection, integrity of the markets and reduction of systemic risk. The systemic risk is however not included in the scope of the Consultation Paper on the basis of a position of the FSB from July 2018. In light of the recent announcement of Libra and assuming that the ambitious plans of the consortium will be accomplished, it might be worth considering under which circumstances a crypto currency or CTPs dealing in such currency could create a systemic risk. Taking into account the speed at which the crypto assets are currently evolving, it would certainly be important for the market to understand regulators' views regarding Libra (or any other crypto currency that might create a systemic risk in the future) before/when it becomes generally available to the public.

There are different international and national working groups that are dealing with the emergence of the Libra crypto currency and the most suitable regulatory approach to be taken. NCAs monitor the developments of Libra and the work of these working groups.

Sandboxing:

Regulatory sandboxes should be envisaged to test certain forms of CTPs before they go live. Regulatory sandboxes have the advantage to allow carrying out pilot projects in a test environment with only very limited access from the broader public. In such a system the operator of a CTP and the relevant regulator, as well as other connected parties, can learn from each other and develop in a cooperative environment knowledge regarding the operational and regulatory challenges a CTP can cause. The regulatory sandboxes should reflect the multijurisdictional dimension of a CTP. The experiences made during such a pilot phase would allow legislators and regulators to create new rules or amend existing frameworks closely adapted to the needs of the users and the platform operators.

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Access to CTPs:

CTPs need to be subjected to AML/CTF obligations, irrespective of the type of activities that are being provided."

Safeguarding participants' assets:

There is not much to add to the conclusions reached by IOSCO on that topic. This topic shows well how today's existing systems have grown over the years to embrace all the risks associated to trading assets on ordinary Trading Venues. Replicating such Trading Venues leads inevitably to similar questions. It must however be noted that the initial system mainly envisaged self-custody through the interaction of wallets and their public and private keys. Although such a system created new questions, the idea was to rely less on intermediaries that present a certain default risk. Re-introducing those intermediaries, albeit in a more modern form, into the CTP system, leads to the same concerns as for ordinary Trading Venues.

Governance:

The Consultation Report identifies several risks relating to the technology underlying the CTP and the clearing and settlement of transactions. Bearing in mind that CTPs mostly use innovative technologies, new challenges may arise in that context. As mentioned in the Consultation Report, attention needs to be paid to the development of the governance rules applicable to the DLT system. Certain majority rules (e.g. the control of a majority of nodes) could give control over the entire network to a single participant (or a group of participants acting in concert). Such a situation could lead to major market distortions and should be considered as a form of market manipulation. Governance rules with too high requirements can however lead to blocking situations where the system will be blocked because no agreement can be found that meets the required levels of approval.

Cross-border jurisdictions:

It is important to stress that CTPs rarely operate within the boundaries of a single jurisdiction. As pointed out by the Consultation Report, it is crucial that legislators and regulators collaborate on setting rules and standards for CTPs. International standards will on the one hand allow to create true cross-border markets for digital assets and on the other hand provide the necessary safeguards to create trust and reliance on such new markets.