

## Article Information

Author: Michael Bacina, Steven Pettigrove

Service: Blockchain, FinTech

Sector: Financial Services, IT & Telecommunications

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## **Blockchain Bites: Tickets released for 2023 Blockchain Week, Hong Kong SFC publishes crypto guidance, Senate to review submissions on Digital Assets (Market Regulation) Bill, Don't mess with Texas: Legislature votes to add crypto to Bill of Rights, IOSCO consults on crypto policy**

**Michael Bacina, Steven Pettigrove, Jake Huang, Luke Misthos, Luke Higgins and Kelly Kim of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.**

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### **Tickets released for 2023 Blockchain Week!**

Australia's annual Blockchain Week is upon us and tickets are available through the [Blockchain Australia](#) website. The event spans 5 days from Monday 26 June to Friday 30 June with in-person events in Sydney, Brisbane, Perth and Melbourne as well as national and global online event days.

The event is organised by Blockchain Australia and attendees will be treated to a diverse group of over 150 speakers, including Caitlin Long (Avanti Financial Group), Commissioner Hester M. Peirce (US Securities and Exchange Commission), Paul Stonham (ASX), Robbie Ferguson (Immutable) and many more.

Each of the five days will include different topics and events. On [Day 1](#), the Sydney event will cover the evolution of banking, payment systems and the future of digital currency exchanges. Speakers from the Commonwealth Treasury, the Digital Finance CRC and ASX will be discussing regulatory reform, CBDCs and the future of digital trading platforms.

[Day 2](#) is the blockchain Fringe Festival and includes events in Perth, Melbourne and Sydney, including Australia's [first Blockchain Lawyers' Forum](#) event at Piper Alderman's Sydney office.

Brisbane will host [Day 3](#) which will take the form of a Web3 classroom including beginner content for those new to the space. Topics include education, custody, NFTs, consumer protection, tax, careers and startups.

[Day 4](#) of Blockchain Week is hosted entirely online, and will include an array of international speakers and panel discussions. Geopolitical trends, regulatory reform, emerging markets, and cross-border compliance will be considered.

Blockchain Week will wrap in Melbourne for Day 5 with robust panel discussions regarding building and innovation, NFTs, decentralised autonomous organizations and more.

There are over 70 events across the 5 days which you can register for [here](#).

### **Hong Kong SFC publishes crypto guidance**

Hong Kong's Securities and Futures Commission (the **SFC**) [has released](#) a bumper 380 page response to its [consultation](#) on Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators and Guidelines for Virtual Asset Trading Platform Operators which will become effective on 1 June 2023.

The SFC received 152 written submissions during the consultation period and made modifications and clarifications to its

proposed guidelines based on the feedback received. According to the SFC, the majority of respondents agreed to the proposal of allowing licensed trading platform operators to serve retail investors. The SFC plans to implement measures to protect these investors, including suitability checks, good governance, enhanced due diligence, admission criteria, and disclosures.

The Guidelines for Virtual Asset Trading Platform Operators will become effective on 1 June 2023. The guidelines outline various requirements for licensed trading platforms, such as safe custody of assets, segregation of client assets, avoidance of conflicts of interest, and cybersecurity standards. The SFC has said that it will provide additional guidance on the new regulatory requirements, license application procedures, and transitional arrangements in the near future.

Virtual asset trading platform operators willing to comply with the SFC's standards are encouraged to apply for a license. Those who do not plan to apply are expected to proceed with an orderly closure of their business in Hong Kong.

The SFC will work with the Investor and Financial Education Council to educate investors and consumers about the risks of trading on unregulated platforms. It is important to note that as of now, no virtual asset trading platform has been approved to provide services to retail investors, and most publicly accessible platforms are not regulated by the SFC in Hong Kong.

The publication of the Guidelines is the final regulatory step before the introduction of Hong Kong's much hyped licensing regime for virtual asset trading platforms. The work of preparing and processing licensing applications now begins with a transitional period to take place over the next 12 months. While Hong Kong has reportedly [flung open its doors to the crypto industry](#), the detailed guidance suggests that Hong Kong will adopt high standards and rigour in opening a licensed framework for virtual asset trading in the city.

### **It's in the mail: Senate to review submissions on Digital Assets (Market Regulation) Bill**

Submissions to the Senate review on [the Digital Assets \(Market Regulation\) Bill 2023 \(the Bill\)](#) are now closed. The Bill was introduced to Parliament in late March this year as a private member's bill by Senator Bragg and proposes the establishment of a licensing and custody regime for cryptocurrency exchanges and stablecoin issues. The Bill builds on an earlier draft bill which the Senator published for public comment in late 2022, being the [Digital Assets \(Market Regulation\) Bill 2022](#).

The Blockchain team at Piper Alderman provided their submission to the Senate this past week, which provided practical suggestions for a more ambitious and robust draft of the Bill. The submission endorses a 'technologically neutral' approach to crypto-market regulation which addresses the specific features of digital assets and encourages the development of local industry to unlock the benefits of Web3 technology. Additionally, the submission encourages a legislative regime which builds upon the best aspects of the [EU's MiCA regime](#) and the efforts of other jurisdictions around the world (e.g. [Hong Kong](#) and [Singapore](#)).

Although the [success of private members' bills has historically been low in Australia](#), they provide an opportunity for the community to be heard and help generate critical and positive discourse within the industry. They can also ventilate ideas for further development as part of Government policy.

[The submission of Joni Pirovich of BADASL](#) also endorses a more ambitious regime, supplying a modified version of the Bill with tracked changes that also endorses legal recognition of DAOs. BADASL's submission highlights that Australia is at a key inflection point in formulating its *"defensive and strategic position to capture the economic growth possible from the anticipated mainstream transition [to Web 3]"* and that more resources need to be allocated to the industry as Australia continues to play regulatory catch-up. BADASL's submission also echoes the need for a more robust bipartisan legislative effort to address the significant regulatory gaps in the Australian blockchain ecosystem.

The Senate is expected to report on its review of the Bill and the submissions received by 2 August 2023. Piper Alderman's submission to the Senate Inquiry can be downloaded [at the bottom this page](#).

### **Don't mess with Texas: Legislature votes to add crypto to Bill of Rights**

[State legislators in Texas have overwhelming voted to add a provision](#) to the state's Bill of Rights which would protect an individual's right to 'own, hold and use digital currencies' as a medium of exchange. The proposal will now go to the Texas Senate and, if approved, which appears likely, a vote of the people in November.

[Bill HJR 146](#) was introduced by State Representative Giovanni Capriglione. In addition to protecting the use of digital currency as a means of exchange, the bill further provides that 'no government shall prohibit or hinder the ownership or holding of any form or quantity of money or other currency.' The bill would also protect the use of bullion and other private scrip as a medium of exchange.

The Texas Bill of Rights shares similar clauses with the US Bill of Rights, covering items concerning freedom of speech, religion and press. The proposed amendment aligns with Capriglione's vision that individuals should have an inviolable right to utilise a medium of exchange mutually agreed upon, including digital currencies.

Tom Glass, the founder of Texas Constitutional Enforcement Group commented:

*[The] Objective...is to make a case in the federal judiciary to invoke the 9th Amendment to the U.S. Constitution which says that there are other natural rights besides those in the first 8 amendments.*

The group has argued that recognising digital currencies under the Texas Bill of Rights is essential for the protection of individuals' financial privacy, particularly in light of the erosion of the US dollar which has seen individuals turn to alternative currencies to protect their wealth. The group emphasised their support for digital currencies in warning that sole reliance on global financial institutions risks 'devaluation and confiscation' of private assets.

The proposed amendment received approval in the Texas State legislature by a vote of 139-2. The proposal has also received praise from opponents of Central Bank Digital Currencies (**CBDCs**).

Texas Senator Ted Cruz [has introduced federal legislation](#) seeking to prohibit the US Federal Reserve from issuing a CBDC on the basis that it could be used as a surveillance tool. The Florida Governor and Republican presidential candidate, Ron De Santis, has signed a bill [which seeks to restrict the acceptance of CBDCs in Florida](#). Other Republican leaning States now look [likely to follow Florida's lead](#). Meanwhile, the US Government is continuing [to explore the development of a CBDC](#) partially as a means of maintaining the primacy of the US dollar in global commerce and trade.

While the Texas proposal awaits a Senate vote and finally a vote of the people, if adopted, constitutional protection could support the further adoption of digital currencies in Texas and beyond. The bill may also set the scene for further political battles over the future of money and CBDCs through the US political process.

### **IOSCO consults on crypto policy**

As regulators around the world are preparing and implementing licensing regimes for digital assets, the International Organization of Securities Commissions (**IOSCO**) has commenced a [consultation on 18 policy recommendations](#) for managing crypto-asset markets.

The global standard setter for securities regulation described the recommendations as 'principles-based' and 'outcomes-focused'. The recommendations focus on the activities of crypto-asset service providers (**CASPs**). The Paper's executive summary reveals IOSCO's intentions to:

*Finalize [the 18 policy recommendations] in early Q4 this year to support greater consistency with respect to regulatory frameworks and oversight in its member jurisdictions, to address concerns related to market integrity and investor protection arising from crypto-asset activities.*

The 18 recommendations cover a wide range of activities by CASPs:

1. Common standards of regulatory outcomes (which reflects the principle of 'same risk, same regulatory outcome')
2. Organizational governance
3. Disclosure of role, capacity and trading conflicts
4. Order handling
5. Trade disclosures
6. Admission to trading
7. Management of primary markets conflicts
8. Fraud and market abuse
9. Market surveillance
10. Management of material non-public information
11. Enhanced regulatory cooperation
12. Overarching custody recommendation
13. Segregation and handling of client monies and assets
14. Disclosure of custody and safekeeping arrangements
15. Client asset reconciliation and independent assurance
16. Securing client money and assets
17. Management and disclosure of operational and technological risks

## 18. Retail client appropriateness (i.e. suitability) and disclosure

The recommendations were designed to cover all classes of crypto-assets including stablecoins and intended to address issues identified in recent events in the industry. Annex B provides a list of these market events and this includes the high profile FTX collapse, the Coinbase insider trading case and the de-pegging of Circle's USDC. However, the paper does not cover decentralized finance (**DeFi**) and a separate consultation report is anticipated in respect of DeFi later this year.

According to [the chair of the IOSCO Board-Level Fintech Task Force](#), in charge of developing the policy recommendations:

*The Recommendations...set expectations and guardrails to regulate and supervise crypto-asset markets, which are inherently cross-border in nature. Crypto-asset service providers need to address unacceptable conflicts of interests and take far more seriously the right of clients to have their monies and assets carefully minded and accounted for.*

Further, in acknowledging the current definitional and interpretive discrepancies between jurisdictions, IOSCO has sought to clarify some common misconceptions. In particular, it addressed the 'common market parlance' of labelling CASPs as 'exchanges' which fails to consider whether the CASP is operating as a trading intermediary or as a market operator. It then set out specific recommendations for each scenario as well as broad requirements that apply to all CASPs.

As IOSCO regulates over 95% of the global securities markets across 130 jurisdictions and covers all major emerging markets, their recommendations will have significant weight with governments at the national level and global coordination on crypto regulation. It is expected to establish a 'critical benchmark' for member jurisdictions to follow and to promote consistency in regulation according to the principle:

*same activities, same risks, same regulatory outcomes.*

This consultation follows IOSCO's [2020 report on regulating crypto-asset trading platforms](#) and will be open for submissions until 31 July 2023. Once the recommendations are finalized, member jurisdictions (including Australia) will be expected to review their domestic regulatory frameworks around crypto-assets to ensure compliance with the new standards.

Separately, this week, the World Economic Forum has weighed in with its own recommendations for crypto policy and regulation. Its paper on [Pathways to the Regulation of Crypto Assets](#) considers differing regulatory approaches between jurisdictions and makes three broad recommendations for international bodies:

1. Promote a harmonized understanding of taxonomy/classification of crypto-asset and activities.
2. Set out best practices and baseline regulatory standards for achieving the desired regulatory outcomes.
3. Encourage passportability of entities and data sharing.

For regional and national regulators, the paper recommends:

1. Cross-sector coordination
2. Regulatory certainty
3. Using technology for regulation by design

Both the WEF's paper and the IOSCO consultation are likely to be poured over by regulators as they continue to work on implementation of domestic regulatory regimes for digital assets.