Global Cryptoasset/Stablecoin Standards

Cite

FSB, Consultation, International Regulation of Crypto-asset Activities; Review of the FSB High-level Recommendations of the Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements

Recommended Distribution:

Digital Finance, Policy, Legal, Government Relations

Websites:

Crypto-Asset Activities: **https://www.fsb.org/wp-content/uploads/P111022-3.pdf**

High-Level Stablecoin Recommendations: **https://www.fsb.org/wp-content/uploads/P131022-1.pdf**

Questions for Consultation: **https://www.fsb.org/wp-content/uploads/P111022-2.pdf**

Impact Assessment

- The FSB is close to finalizing a same-activity/same-rule standard for cryptoassets and for stablecoins with demonstrable financial-stability implications.
- This standard would apply only to rules germane to financial stability, specifics of which are not generally detailed in the consultations.
- Many other critical issues – e.g., consumer or investor protection, monetary policy, AML compliance – are not addressed in these consultations, with no indication of the timing when or if global regulators might turn to them.
- Asymmetric standards and/or regulatory arbitrage are thus likely to continue.

Overview

Speaking for global banking, securities, and insurance regulators, the Financial Stability Board has taken its firmest stand to date on cryptoassets and outlined high-level and often principles-based global standards to govern them going forward. Although generally limited to financial stability and often couched in broad terms, these global standards would generally track the very crypto-cautious stand taken by U.S. regulators as well as policy set by the Securities and Exchange Commission, not that also of the Commodity Futures Trading Commission when it comes to cryptoassets that cross traditional sectoral boundaries.

Impact

The FSB's request for comment is premised on a decision to move away from longstanding plans only to monitor cryptoassets[1] to the conclusion expressed in this consultation that cryptoassets may now pose systemic risk. The reasoning here is very similar to that adopted by the Financial Stability Oversight Council in its recent report,[2] but global regulators content themselves only with asking questions about next steps rather than recommending these as the FSOC has recently done. The FSB also differs from the Treasury Department, arguing that new standards should "harness" cryptoasset benefits rather than concluding that these obligations have few, if any, natural use cases beyond facilitating speculation.

Still, the FSB does recommend applying like-kind rules to like-kind crypto exposures along with regulating novel aspects of cryptoassets – e.g., stablecoins – if these are interconnected with traditional financial institutions or intermediaries. The consultation thus includes a detailed discussion of challenges to consistent regulation and recommendations for new strategies to address it. Building on its 2020 stablecoin policy,[3] this statement and the papers that accompany it call for extensive stablecoin standards akin to those pressed in the President's Working Group report late last year[4] and the Treasury Department's recent report.[5] The FSB also reiterates its support for pending Basel capital standards that differentiate prudent stablecoins from other cryptoassets.[6]

Although the standards proposed detailed requirements for systemic-stablecoin reserve assets, perhaps the most specific, novel recommendation – and it is still in very general terms – from the FSB addresses the risks within crypto and stablecoin enterprises that engage in activities with potential reinforcing risks and/or conflicts of interest (e.g., issuing an asset and maintaining a trading platform for it). This echoes a recommendation in the Treasury report,[7] arguing for rules governing vertical integration within cryptoasset ventures. It may be easier for non-U.S. regulators to accomplish this objective because many have consolidated regulatory authority over banking and securities firms as well as broader authority over nonbank organizations. Increased cooperation along lines sought by the FSOC could accomplish better coordination of these internal risks than is now the case, but new law is likely to ensure this cooperation as well as expand jurisdiction where federal law now does not expressly provide it.

[1] See **CRYPTO20**, *Financial Services Management*, October 14, 2021.

[2] See *Client Report* **CRYPTO33**, October 5, 2022.

[3] See **CRYPTO14** *Financial Services Management*, April 23, 2020.

[4] See *Client Report* **CRYPTO21**, November 2, 2021.

[5] See *Client Report* **CBDC14**, September 19, 2022.

[6] See **CRYPTO29**, *Financial Services Management*, July 7, 2022.

[7] See *Client Report* **CRYPTO32**, September 21, 2022

What's Next

This consultation was released on October 11; comments are due by December 15. The FSB intends to finalize its recommendations by the middle of next year, looking thereafter also at DeFi and deciding by 2025 if additional standards are necessary.

Analysis

The FSB's focus in all of these documents is financial stability, not investor or consumer protection, AML/CFT compliance, competition, monetary-policy and other concerns; it does recommend that nations address these.

A. Cryptoassets

The FSB's consultation includes an extensive discussion of cryptoasset risk, expanding on but in many ways repeating prior work. As is often the case with FSB documents, actions in individual jurisdictions are also surveyed. Recommendations proposed here include:

- cryptoasset issuers, service providers, intermediaries, and similar entities should be governed by regulators and supervisors on the same-activity/same-standard construct focused on financial stability.
- cryptoasset issuers should generally be required to have and then disclose internal-governance protocols proportionate to risk with clear lines of responsibility and accountability.
- cryptoasset entities should also have effective internal risk-management programs, with regulators empowered to address financial-stability risk.
- cryptoasset entities should also have effective data-management protocols accessible to regulatory agencies, with these firms also required to disclose to users and "relevant stakeholders" factors such as their operations, risk profile, and financial condition.
- authorities should monitor inter-connections within the cryptosphere and to the broader financial system, addressing resulting systemic risk. The consultation does not go on to say how this should be done.
- multi-function crypto entities should be subject to comprehensive regulation at the parent and component-part levels, setting segregation standards as appropriate. The body of the FSB's paper also suggests that some jurisdictions may want simply to prohibit crypto "conglomerates."
- Noting opportunities for regulatory arbitrage, the FSB also again appeals for international cooperation and cross-jurisdiction data-sharing.

B. Stablecoins

The FSB has also released a consultative paper laying out "high-level" principles for stablecoins with global financial implications. It uses the term "stablecoin" to denote cryptoassets with stabilization features, but its latest proposal is not intended to be limited to products that expressly call themselves stablecoins or are treated as such under particular jurisdictions. The FSB's recommendations also only cover global stablecoins (GSCs), i.e., those with global reach. Much in the report describes recent market strains and losses, noting that stablecoins are acting as a fiat-currency substitute in crypto transactions without many essential controls to ensure that they can actually perform payment, investment, and other advertised functions.

The FSB's high-level recommendations are similar to those for cryptoassets, noting for example that authorities should depend on existing sectoral standards to govern like-kind stablecoin activities and cooperate across borders. In addition:

- regulators should monitor stablecoins to anticipate any under their purview that may become GSCs and have readily at hand additional standards to govern such instruments.
- authorities should have needed information about reserve assets and other key performance criteria and be able to mandate corrective action. Authorities should also be able to mitigate risk or even prohibit certain stablecoins.
- custodial-wallet and trading platforms associated with stablecoins should also be regulated and supervised. Recommendations detail how this should be done with regard to matters such as activity and asset firewalls, resolvability, and settlement finality.
- stablecoin entities should not be permitted to set themselves up in ways outside the reach of effective regulation and supervision, with regulators charged with knowing who has organized a stablecoin and having the data and tools at hand to ensure accountability.
- third parties supporting GSCs should not provide an excuse for the issuer to avoid legal liability and should themselves be properly governed.

C. Questions

Those raised in the consultation include:

- the extent to which the proposed standards are suitably comprehensive;
- whether standards should cover all cryptoassets and stablecoins, with heightened standards then applied to any with a systemic footprint;
- the need for a more granular categorization of cryptoassets versus GSCs;
- the need for multinational intervention;
- any omitted issues;
- the reports' analytical and recommendation accuracy;
- the need for more specific intermediary standards;
- specific recommendations for cross-border cooperation; and
- the approach to stablecoin reserve assets.