
AFSA Guidance for Over-the-Counter Transactions with Digital Assets

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with Digital Assets**

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INTRODUCTION

1. This Guidance for over-the-counter (hereinafter, referred to as "OTC") transactions with Digital Assets (hereinafter, referred to as the "Guidance") is issued in accordance with Section 8-1 of the Astana International Financial Centre (hereinafter, referred to as the "AIFC") Financial Services Framework Regulations (hereinafter, referred to as "FSFR"). It should be read in conjunction with:
 - a. AIFC Rules on Currency Regulation and Provision of Information on Currency Transactions in the AIFC;
 - b. AIFC Rules on Digital Asset Activities (hereinafter referred to as the "DAA");
 - c. AIFC Rules and mechanisms of cooperation of Unbacked Digital Asset Exchanges and/or Centre Participants authorised to carry out digital assets-related activities with second-tier bank of the Republic Of Kazakhstan;
 - d. AIFC General Rules;
 - e. AIFC Conduct of Business Rules (hereinafter referred to as the "COB"), and;
 - f. AIFC Anti-Money Laundering and Counter-Terrorist Financing and Sanctions Rules (hereinafter referred to as the "AML").
2. The Guidance applies to Authorised Firms engaged in a Regulated Activity with Digital Assets. For the avoidance of doubt, the Guidance does not apply to FinTech Lab Participants unless indicated otherwise in their Licence notices.
3. Unless specifically defined otherwise or the context dictates otherwise, the terms in the Guidance hold the same meaning as outlined in the AIFC Glossary.

BACKGROUND

4. On 6 February 2023, the Law "On Digital Assets in the Republic of Kazakhstan" (hereinafter, referred to as the "Law on Digital Assets") was enacted. The Law on Digital Assets prohibits issuance and circulation of unbacked Digital Assets as well as the activity of Digital Asset exchanges in the Republic of Kazakhstan excluding the territory of the AIFC.
5. The Law on Digital Assets obliges Digital Asset miners to sell at least 50% of Digital Assets mined in the Republic of Kazakhstan via AIFC – licensed Digital Asset Trading Facilities Operators starting from 1 January 2024. This number goes up to 75 % on 1 January 2025.
6. On 10 September 2023, the Board of Directors of the Astana Financial Services Authority (hereinafter, referred to as the "AFSA") approved DAA, a platform-level regulatory framework for Digital Asset Service Providers in the AIFC with the effective date from 1 January 2024.
7. Miners prefer to sell mined Digital Assets through OTC because it allows to discharge large volumes of Digital Assets quicker and in large blocks.

PURPOSE

8. The purpose of the Guidance is to provide clarity to Authorised Firms on OTC transactions with Digital Assets in the AIFC.

CONDUCTING OVER-THE-COUNTER TRANSACTIONS

1. OTC activity with Digital Assets can be conducted under a Digital Asset broker/dealer License.
2. If combining a non-OTC activity with an OTC activity, an Authorised Firm will assess whether an additional authorisation is required. AFSA will evaluate each individual application on a risk-based approach.
3. An Authorised Firm is expected to establish safe and resilient communication channels agreed together with its Client and respectively ensure record-keeping measures of all such communication in accordance with COB and AML.
4. An Authorised Firm is expected to conduct a counterparty risk assessment of Clients when conducting an OTC activity.

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5. An Authorised Firm is recommended to establish separate OTC desks within their platforms. AFSA expects that such OTC desk would be a separate function within the Authorised Firm's platform and that it would be able to effectively manage any conflict of interests.
6. An Authorised Firm conducting OTC activity is expected to establish and implement effective anti-money laundering and countering financing of terrorism policies, procedures, and controls to manage and mitigate money laundering, terrorist financing and proliferation risks associated with OTC transactions, following relevant guidance issued by the AFSA and the Financial Action Task Force.
7. An Authorised Firm conducting OTC activity is expected to adhere to Best Execution principle set out in COB. It means that when an Authorised Firm executes any transaction any transaction with or for a Client in a Digital Asset, it must take all sufficient steps to obtain the best possible result for the Client taking into account the information available, including the following factors:
 - a. price;
 - b. costs;
 - c. speed;
 - d. likelihood of execution and settlement;
 - e. size;
 - f. nature; and
 - g. any other consideration relevant to execution.
8. An Authorised Firm is deemed to have met its best execution obligation in respect to OTC transaction with Digital Assets if the transaction has been effectuated in accordance with the order based on specific instructions from the Client. This only applies to parts of the order covered by such specific instructions.
9. There are a number of exceptions to this requirement, for example when an Authorised Firm is dealing with a Market Counterparty or with a Fund Manager in respect to the Exempt Fund under its management. Authorised Firms are recommended to consult with the relevant provisions of COB, namely section 6 Order Execution and Order Handling.
10. Pursuant to COB 4.2.1. an Authorised Firm must provide specified key information of OTC Client Agreement before conducting any OTC transactions. AFSA considers an OTC activity to be an Investment Business under COB. Therefore, an integral part of the Client Agreement should include the following information:
 - a. the arrangements for giving instructions to the Authorised Firm and acknowledging those instructions;
 - b. information about any agreed investment parameters;
 - c. the arrangements for notifying the Client of any Transaction Executed on his behalf;
 - d. if the Authorised Firm may act as principal in a Transaction, when it will do so;
 - e. the frequency of any periodic statements and whether those statements will include some measure of performance, and if so, what the basis of that measurement will be;
 - f. when the obligation to provide best execution can be and is to be waived, a statement that the Authorised Firm does not owe a duty of best execution or the circumstances in which it does not owe such a duty;
 - g. where applicable, the basis on which assets comprised in the portfolio are to be valued.
11. Additionally, depending on the type of Client, some core information should also be disclosed in the Client Agreement as follows:
 - a. In the case of a Retail Client, the core information is:
 - i. the name and address of the Authorised Firm, and if it is a Subsidiary, the name and address of the ultimate Holding Company;
 - ii. the regulatory status of the Authorised Firm;
 - iii. when and how the Client Agreement is to come into force and how the agreement may be amended or terminated;
 - iv. sufficient details of the service that the Authorised Firm will provide, including where relevant, information about any Financial Product or other restrictions applying to the Authorised Firm in the provision of its services and how such restrictions impact on the service offered by the Authorised Firm. If there are no such restrictions, a statement to that effect;

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- v. details of fees, costs and other charges and the basis upon which the Authorised Firm will impose those fees, costs and other charges;
 - vi. details of any conflicts of interests for the purposes of disclosure;
 - vii. key particulars of the Authorised Firm's Complaints handling procedures and a statement that a copy of the procedures is available free of charge upon request;
 - b. In the case of a Professional Client, the core information is the information referred to in (i), (ii), (iii) and (iv) above.
 - c. In the case of a Market Counterparty, the core information is the information referred to in (i) and (ii) above.
12. It is expected that if an Authorised Firm cannot meet regulatory requirements for conducting OTC transactions, it would refrain from engaging into such activity.

TRANSACTIONS RELATED TO DIGITAL ASSET MINERS OR MINING POOLS

13. When dealing with Digital Asset miners or mining pools, an Authorised Firm is expected to classify Digital Asset miners or mining pools as a Retail Client, Professional Client, or Market Counterparty Pursuant to COB 2.1.1.
14. An Authorised Firm should ensure collection of documents confirming regulatory status and good standing of Digital Asset miners or mining pools at the onboarding stage in accordance with AML. It should also ensure timely update of these documents post-onboarding stage.
15. Alongside with a face-to-face method, an Authorised Firm may apply non-face-to-face methods of onboarding when a Client is an individual. If a Client is an Undertaking, it is expected that an Authorised Firm identifies key personnel of a Digital Asset miner or mining pool and applies appropriate onboarding measures to them.
16. An Authorised Firm should be aware that approaches to the regulation, supervision, and enforcement of Digital Asset miners or mining pools, may differ across jurisdictions when dealing with overseas Clients.
17. When dealing with Digital Asset miners or mining pools, an Authorised Firms should consistently implement measures to manage and mitigate identified risks, considering both local and overseas legal and regulatory requirements.