



ASIC

Australian Securities &
Investments Commission

CONSULTATION PAPER 381

Updates to INFO 225: Digital assets: Financial products and services

December 2024

About this paper

This consultation paper is about ASIC's guidance on digital assets and related products.

It sets out our proposals to update Information Sheet 225 *Crypto-assets* ([INFO 225](#)) to provide further guidance about our interpretation of how the *Corporations Act 2001* applies to crypto- and digital assets. It also sets out our proposals for licensing entities that provide financial services in relation to crypto- and digital assets that are financial products.

Note: Draft updated Information Sheet 225 *Digital assets: Financial products and services* is available on our [Consultations](#) webpage under CP 381.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 4 December 2024 and is based on the legislation as at the date of issue.

As at the date of this paper, the Government and Treasury are in the process of developing policy proposals to regulate digital asset facilities (DAFs) and digital asset platforms (DAPs). This paper is not intended to, and does not, provide guidance about these proposals.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on licensing firms providing financial services relating to digital assets that are financial products. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous, we will not be able to contact you to discuss your submission should we need to.

Please note that we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our [privacy policy](#) for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 28 February 2025 to:

Digital Assets Team
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001
email: digital.assets@asic.gov.au

What will happen next?

Stage 1	4 December 2024	ASIC consultation paper released
Stage 2	28 February 2025	Comments due on the consultation paper
Stage 3	Q2 2025	Updated INFO 225 released, along with other accompanying documents following consultation

A The proposed updates to INFO 225

Key points

Information Sheet 225 *Crypto-assets* ([INFO 225](#)), as it is currently named, provides guidance to persons offering products and services in relation to crypto- and digital assets. It sets out our views regarding when a crypto- or digital asset, or related product, may be a financial product. It also discusses when someone may be providing a financial service that requires a licence from ASIC.

We consider that now is an appropriate time to update INFO 225. Digital asset markets have evolved significantly in recent years, with many new products and services being offered.

We propose to update INFO 225, subject to feedback from this consultation. Draft updated INFO 225 includes a range of worked examples. See the draft in the attachment to this consultation paper.

Background to INFO 225

- 1 Digital asset markets have evolved significantly over the last 10 to 15 years, since the bitcoin white paper was first published. The industry has grown from hundreds of digital asset tokens to tens of thousands now. In Australia, there are currently over 360 digital currency exchanges (DCEs) registered with the Australian Transaction Reports and Analysis Centre (AUSTRAC).
- 2 Chapter 7 of the *Corporations Act 2001* (Corporations Act) is drafted in a broad and technologically neutral way. The Corporations Act provides that financial products are facilities through which a person makes a financial investment, manages financial risk or makes non-cash payments. There are also specific inclusions and exclusions from this general definition.
- 3 Our first published guidance on crypto-assets, and how the definitions of financial products in the Corporations Act may apply to crypto-assets and related products and services, was released in 2017 as Information Sheet 225 *Initial coin offerings* (as it was then known). This came after Information Sheet 219 *Evaluating distributed ledger technology* ([INFO 219](#)), also in 2017. An update in 2018 introduced the term ‘crypto-asset’ into INFO 225.
- 4 [INFO 225](#) was updated in 2019, adding further information and broader consideration of when crypto-assets and related products may be financial products, and can interact with the existing financial services laws.
- 5 It was further updated in 2021 to add good practice guidance for investment products providing exposure to crypto-assets. This followed Consultation

Paper 343 *Crypto-assets as underlying assets for ETPs and other investment products* ([CP 343](#)) and Report 705 *Response to submissions on CP 343 Crypto-assets as underlying assets for ETPs and other investment products* ([REP 705](#)). The title was changed at that time to Information Sheet 225 *Crypto-assets* to more accurately reflect the scope of the guidance already included.

The need to update INFO 225

- 6 The digital asset market has continued to develop significantly in recent years, with new digital asset products and services being offered. In line with the continued expansion and emerging offerings in digital asset markets, our regulatory approach also continues to evolve. We consider that now is an appropriate time to update INFO 225. This is facilitated by the existing regulatory regime being principles-based and providing sufficient flexibility to regulate digital assets that are financial products.
- 7 Since the last substantive update relating to the core guidance about crypto-assets in 2019, there have been a number of domestic and international developments, including:
- (a) new digital asset products and services being offered;
 - (b) increasing calls from industry for clearer guidance about how ASIC views the existing regulatory perimeter;
 - (c) the publication of [Policy recommendations for crypto and digital asset markets—final report](#) (PDF 695 KB) and the [Final report with policy recommendations for decentralized finance \(DeFi\)](#) (PDF 574 KB) by the International Organization of Securities Commissions (IOSCO). They set out policy recommendations for IOSCO member jurisdictions to address concerns in crypto- and digital asset markets in support of greater international consistency;
 - (d) the firming of our views on parts of the existing regulatory perimeter through our ongoing work in:
 - (i) reviewing licence and relief applications and reports of misconduct;
 - (ii) liaison with industry (bilateral, multilateral and through ASIC’s [Innovation Hub](#));
 - (iii) considering the outcomes of domestic legal cases; and
 - (iv) monitoring developments overseas, where approaches have firmed up.

Links with proposed law reforms

- 8 The Government is proposing to introduce a regulatory framework for entities providing access to, and holding, digital assets, or other assets that support the issuance of digital assets.
- 9 The proposal paper states:
 ‘... the proposed framework does not displace the existing financial services laws. This means it will still be necessary to distinguish between entitlements and arrangements that are financial products and those that are not.’

Therefore, clarifying what constitutes a financial product under current financial services laws will remain essential even with these reforms. In this context, our proposed updates to INFO 225 complement the Government’s proposed reforms.

Note: See [Regulating digital asset platforms](#) (PDF 927 KB), October 2023, p. 17.

- 10 In many comparable overseas jurisdictions, there has been a similar dual process of regulating some crypto- and digital assets under current laws and supplementing this with some law reform to address, to the extent possible, any gaps. For example, in Europe, the Markets in Crypto-Assets Regulation (MiCA) covers crypto-assets that are not financial instruments. Crypto-assets that are financial instruments are covered by the existing laws. The United Kingdom, Hong Kong and Singapore also distinguish between crypto- and digital assets that come within the existing regulatory perimeter and those that are regulated (or proposed to be regulated) following law reforms.

Note: On the EU approach, see the [ESMA draft guidelines on the qualification of crypto-assets as financial instruments](#) (PDF 631 KB), consultation paper, January 2024.

- 11 In addition, the Government is currently progressing with law reforms in relation to licensing payment service providers under the Corporations Act: see [Payments system modernisation \(regulation of payment service providers\)](#). This includes a proposed regulatory regime for ‘payment stablecoins’. INFO 225 is intended to provide guidance about the current regime and, as such, we recognise that it will need to be updated to reflect changes to the proposed licensing of payment service providers, and ‘payment stablecoins’ in particular, if those reforms are implemented.

Our overall approach to the update

Proposal

- A1 We propose to update INFO 225, subject to feedback from this consultation. See draft updated INFO 225 in the attachment to this consultation paper.

Your feedback

- A1Q1 Are there any topics or guidance that have not been included in draft updated INFO 225 that you think should be? Please provide details.
- A1Q2 Are there any topics or guidance that were included that you think should *not* have been included? Please provide details.
- A1Q3 Do you agree that the good practice guidance in INFO 225 directed to responsible entities is applicable to providers of custodial and depository services that provide custody of digital assets that are financial products? Are there any good practices that you would like added (e.g. on staking services)? Please provide details.

Content of the proposed updates

- 12 The proposed changes to draft updated INFO 225 include:
- (a) adding guidance on a facility for making a financial investment (s763B of the Corporations Act);
 - (b) decreasing the focus on the role of initial coin offerings, as this is only one method for selling digital assets to consumers;
 - (c) adding further discussion of the typical financial services that we expect an entity would apply for when applying for or applying to vary an Australian financial services (AFS) licence, and noting the application process;
 - (d) including 13 worked examples to outline how ASIC interprets the existing financial product definitions applied to hypothetical scenarios;
 - (e) extending the good practice guidance directed to responsible entities in INFO 225 to also apply to providers of custodial and depository services;
 - (f) adding a section to address applications for relief and granting no-action letters;
 - (g) adding consideration of the design and distribution obligations; and
 - (h) edits to consolidate concepts, improve flow and provide further details and clarifications, where appropriate.
- 13 The current version of INFO 225 is titled ‘Crypto-assets’. We propose as part of this update to change the title of INFO 225 to ‘Digital assets’, and use this term throughout. This reflects that ‘digital assets’ is a broader concept that includes other arrangements such as tokenised versions of traditional financial products like securities and interests in managed investment schemes.

- 14 We intend for INFO 225 to continue to be a ‘living document’ and be updated in line with the evolution of digital assets.

The worked examples in INFO 225

Proposal

- A2 We propose to include the worked examples as set out in draft updated INFO 225.

Your feedback

- A2Q1 Do you have comments on any of the proposed worked examples? Please give details, including whether you consider the product discussed may/may not be a financial product.
- A2Q2 Are there any *additional* examples you would like to see included? Please give details of the suggested example(s), and why you consider the digital asset discussed may/may not be a financial product.
- A2Q3 For any of these examples, are there any unintended consequences? If so, what are these and what do you propose in response?

Rationale

- 15 The worked examples help to demonstrate how the current financial product definition and concepts apply to some hypothetical digital asset scenarios under the existing regulatory regime. The examples include:
- (a) Example 1—exchange token;
 - (b) Example 2—native token staking service;
 - (c) Example 3—in-game non-fungible tokens (NFT);
 - (d) Example 4—yield-bearing stablecoin;
 - (e) Example 5—gold asset referenced token;
 - (f) Example 6—membership NFT;
 - (g) Example 7—token representing a claim for pre-paid services;
 - (h) Example 8—fundraising for a new blockchain;
 - (i) Example 9—meme coin;
 - (j) Example 10—tokenised concert ticket;
 - (k) Example 11—tokenised security;
 - (l) Example 12—contract for difference over a digital asset; and
 - (m) Example 13—digital asset wallet.

- 16 These hypothetical worked examples are designed to help you think about the concept of a financial product more broadly, and how it might apply to digital assets and related products. However, these examples are not exhaustive. They are ASIC’s views on those specific sets of hypothetical scenarios. While hypothetical, the examples are informed by real products and arrangements that we have observed:
- (a) in the media and public commentary;
 - (b) in the digital asset marketplace;
 - (c) in licence applications; and
 - (d) in discussions with businesses, international stakeholders and regulators, including businesses considering using the [Enhanced regulatory sandbox](#), and contacting ASIC’s [Innovation Hub](#).
- 17 We have adopted the following general principles in the worked examples:
- (a) some digital asset products may meet the definition of more than one financial product (e.g. a particular digital asset product may be both a debenture and a non-cash payment facility);
 - (b) even where a digital asset, when sold by itself, may not be a financial product, when it is bundled together with one or more other products or services, the overall arrangement may amount to a financial product; and
 - (c) when analysing whether a financial product exists, you should consider not just the digital asset token, but all of the rights, benefits, expectations and product features inherent to, attaching to, and being offered together with the token.
- 18 The inclusion of these worked examples aims to strike a balance between:
- (a) reflecting the calls from industry to include more detailed guidance in [INFO 225](#)—some have called for a list of which specific digital assets and related products ASIC considers are financial products; and
 - (b) keeping the guidance principles-based which is general enough to cater for the broad range of products and services in the market (and the likelihood of significant further innovation in the sector in the short to medium term), and noting that the rights and benefits of a digital asset can change over time.

‘Stablecoins’ and wrapped tokens

Proposal

- A3 We are considering whether to develop additional examples for INFO 225 on wrapped tokens and ‘stablecoins’ that may be financial products. We are seeking feedback on the practical implications for businesses.

Your feedback

- A3Q1 Do you think it would be helpful to include an example of a wrapped token and/or a 'stablecoin' in INFO 225? If so, do you have any suggestions on the features of the potential examples in paragraphs 20–21?
- A3Q2 What are the practical implications for businesses (e.g. for issuers or intermediaries) if wrapped tokens or 'stablecoins' with these features were classified as financial products? Please give details.
- A3Q3 Would any transitional provisions or regulatory relief be needed to facilitate transition from regulation of a wrapped token or a 'stablecoin' as a financial product under the current law to the Government's proposed approaches to 'stablecoins' and wrapped tokens? Please give details.

Rationale

- 19 We are considering the application of the current law to wrapped tokens and tokens that are marketed as 'stablecoins'.
- 20 We consider that a wrapped token with the following features may be a financial product (specifically a derivative):
- (a) a company offers a product that enables a digital asset (normally only available on its 'native' blockchain) to be represented on a different blockchain;
 - (b) the version that is on the different blockchain has added functionality and lower fees;
 - (c) the price of the wrapped token changes in line with the price of the native token, but the prices are not identical; and
 - (d) any subsequent holder of the wrapped token can redeem it for the native token.
- 21 We consider that a 'stablecoin' with the following features may be a financial product (specifically a non-cash payment facility):
- (a) the digital asset token is marketed as a non-interest-bearing 'stablecoin';
 - (b) the token expected to maintain a stable price and value in Australian dollars (AUD), and the tokens are issued at par value (i.e. one token equals one AUD);
 - (c) the company will redeem, or buy back, the tokens at par value in exchange for fiat money, on demand from any holder (subject to any relevant know-your-customer (KYC) requirements);
 - (d) the money received by the company is recorded as an asset, and the requirement to repay is recorded as a liability, on the company's balance sheet; and

- (e) the company will either hold the money raised from token sales in a bank account or use it to purchase low-risk investments (e.g. Australian Government Securities).
- 22 We are considering whether to develop a wrapped token and a ‘stablecoin’ example based on the above features for INFO 225 (in addition to the existing yield-bearing ‘stablecoin’ in Example 4).
- 23 It appears to us that wrapped tokens and ‘stablecoins’ with these features may be financial products. We are aware that stakeholders may have a range of views on these digital assets and their legal treatment. Further, the conclusions drawn may have practical implications for digital asset businesses. Before finalising our view, we would benefit from feedback on these digital assets and their regulatory classification, and the practical implications for businesses.
- 24 We are also aware that the potential application of the current law as discussed above may be materially different from how the Government’s proposed payment service licensing and DAF/DAP reforms may potentially apply to ‘stablecoins’ and wrapped tokens

Note: See [Regulating digital asset platforms](#) (PDF 927 KB), October 2023 and [Payments system modernisation \(regulation of payment service providers\)](#), December 2023.

- 25 We are interested in feedback on any practical implications and transitional issues that may arise from these particular digital assets. This feedback can include any potential suggestions for relief from the existing financial services regime that may be appropriate, including to facilitate a smooth transition to the expected future state for these digital assets under the proposed law reforms.

B Licensing of digital asset businesses and their ongoing obligations

Key points

The updates to INFO 225 do not impose any new regulatory obligations. However, publication of our updated guidance may prompt some people to consider their regulatory status under current Australian laws and decide that they need to apply for a licence or vary an existing licence.

We are consulting on a proposed transitional approach that could include a conditional, class no-action position. This would be available to firms providing services in relation to digital assets that are actively and in good faith applying for one or more licences from ASIC.

This section also sets out our proposed approach to licensing digital asset businesses under the AFS licensing regime. It also indicates ASIC will undertake further work relating to market and clearing and settlement facility licences.

In general, we will regulate digital asset products that are financial products in a similar way to 'traditional' financial products of the same kind.

ASIC's approach to licensing digital asset businesses

- 26 The updates to INFO 225 do not impose any new regulatory obligations or requirements—they simply clarify our interpretation of existing financial services laws, including when a digital asset, or related product, is a financial product. It is your responsibility to determine whether your offerings, in relation to digital assets that are financial products, require you to hold one or more licences with the appropriate authorisations.
- 27 We consider that many digital assets (whether alone or in combination with other products or services) are financial products under the Corporations Act.

Our transitional approach

Proposal

- B1** We are considering a class no-action position for digital asset businesses that are in the process of applying for or applying to vary an AFS licence, Australian market licence or clearing and settlement (CS) facility licence. We propose that it would have the following scope and conditions:
- (a) it would only apply to financial services in relation to digital assets that are financial products;

- (b) it would only apply to persons that had commenced operations in Australia before the date of this consultation paper;
- (c) for AFS licence applications, it would apply from the time a person lodges a licence application or variation application (that has not been rejected as incomplete or deficient in any material respect) to cover their digital asset products and services, provided they lodge the application no later than six months from the date our updated INFO 225 is published;
- (d) for an Australian market licence or a CS facility licence, it would apply from the time a person informs ASIC in writing of its intention to lodge a licence application or variation application to cover their digital asset products, provided they inform ASIC no later than six months from the date our updated INFO 225 is published, and provided the licence application or variation application is lodged within 12 months of the date the person informed ASIC in writing of its intention;
- (e) it would last until the licence application has been either withdrawn or decided upon (i.e. a licence has been granted or refused);
- (f) the person would have to be a member of the Australian Financial Complaints Authority (AFCA);
- (g) if the person is not an Australian company or resident, it would have to register as a foreign company (including appointing a local agent under s601CF of the Corporations Act);
- (h) the no-action position would not be available in relation to crypto lending/earn products and derivatives referencing digital assets (other than wrapped tokens—see proposal A3); and
- (i) ASIC may notify a person in writing that the no-action position does not apply to them (from the date of the notice).

Your feedback

- B1Q1 Do you agree that ASIC should progress with a class no-action position as proposed here? If not, please give reasons.
- B1Q2 Are the proposed conditions appropriate? Are there any additions or changes to the proposed conditions that will be more effective for investor protection?
- B1Q3 Do you agree that the class no-action position should be dependent on a person lodging an AFS licence application or written intention to apply for a market and/or CS facility licence? If not, please explain and suggest an alternative.
- B1Q4 Should there be a deadline for applying for an AFS licence or commencing pre-lodgement discussions in relation to a market and/or a CS facility licence? Please provide reasons.
- B1Q5 For product issuers, should the no-action position extend to other obligations—for example, to prepare a Product Disclosure Statement (PDS)? Why or why not?

Rationale

- 28 Updates to our guidance about the current financial services laws do not generally have a transition period. However, we recognise that persons involved with digital assets and related services will need time to comply with the law (e.g. apply for a licence, prepare a PDS).
- 29 As such, we are considering providing a no-action position in relation to firms that are actively and in good faith applying for a licence, or licence variation. It would apply to conduct occurring from the date of their application until their application is finalised (i.e. decided upon or withdrawn). For market and CS facilities licences, it would apply to conduct occurring from the time a person informs ASIC in writing of its intention to lodge a licence application or variation application. The no-action position would only apply to licensing breaches, not other misconduct (e.g. false or misleading statements, or fraud).
- 30 We are considering excluding from the no-action position conduct in relation to:
- (a) crypto lending/earn-type products (where an intermediary acts for the customers in lending, or investing, crypto-assets belonging to the customer to generate a return for them); and
 - (b) derivatives referencing digital assets (except for wrapped tokens).
- 31 Our initial view is that there is a greater level of certainty in the market about these products. For crypto lending/earn-type products, our enforcement actions have already provided increased clarity to the industry. For derivatives (e.g. contracts for difference and futures), we have not heard significant concerns about a lack of clarity in the application of the definition of a derivative.
- 32 Our no-action position would be subject to several conditions as set out in proposal B1. These conditions are designed to ensure that firms relying on the no-action position are subject to Australia's key consumer dispute resolution body (AFCA) and Australian courts.
- 33 The proposed conditions are also designed to preserve ASIC's ability to take compliance and enforcement action if serious issues arise and in ASIC's view it is in the public interest to take action.

Note: Our overall approach to no-action letters is set out in Regulatory Guide 108 *No-action letters* ([RG 108](#)). An ASIC no-action position by its nature does not prevent third parties (e.g. consumers) from taking legal action (see RG 108.19).

Consideration of AFS licence applications and ongoing obligations

Proposal

- B2** The existing AFS licence processes, regulatory guides and conditions will apply to persons providing financial services in relation to digital assets, including those that are based on the type of financial product involved.

Your feedback

- B2Q1** Do you agree that the same regulatory obligations should apply to digital asset and traditional financial products of the same category (e.g. securities, derivatives)? Please explain your response and provide specific examples.
- B2Q2** Are there any aspects of ASIC's guidance that may need to be tailored for digital assets that are financial products?
- B2Q3** Do you agree that the approach proposed for custodial and depository services is appropriate for holding custody of digital assets? Do you agree that extending the omnibus client accounts is appropriate for digital assets that are financial products? Please explain, providing examples, if relevant.
- B2Q4** In relation to organisational competence, what are your views on what ASIC could consider in applying Option 5 in Regulatory Guide 105 *AFS licensing: Organisational competence* ([RG 105](#)) for entities providing financial services in relation to digital assets that are financial products?

- B3** We propose to tailor licence authorisations in relation to certain digital assets that are derivatives, and for digital assets that are 'miscellaneous financial investment products'.

Your feedback

- B3Q1** In relation to the authorisations sought during an AFS licence application, do you agree that the existing authorisations are generally appropriate to digital asset service providers?
- B3Q2** Do you agree with the proposal to tailor the derivatives and miscellaneous financial investment product authorisations? Are there any others that you would recommend?

Rationale

- 34 The principles underpinning the Corporations Act are generally technologically neutral. The existing Corporations Act obligations generally apply to digital asset financial services businesses as they do to traditional financial services businesses. As with traditional financial services businesses, some of the obligations are general and others depend on which specific financial products or services the business is providing.

35 For example, where you carry on business to deal in a particular digital asset that is a security under the Corporations Act, you will need an AFS licence with the authorisation to deal in securities (unless an exemption applies) and comply with existing AFS licence obligations that apply to dealing in securities.

36 The general obligations of an AFS licensee (e.g. to provide financial services efficiently, honestly and fairly; have adequate arrangements to manage conflicts of interest; and have adequate risk management arrangements) apply equally to AFS licensees providing digital asset related services. However, what is ‘adequate’ may be different for such firms due to the unique business models, issues and risks involved.

37 The risks associated with new technologies such as blockchain and distributed ledgers may warrant a different approach from adhering to the general principles. Therefore, the nature of a digital asset service provider licensee’s operations, systems, controls, etc., in meeting the general requirements applicable to financial services businesses may be different from traditional financial products, and we expect these to be fit for purpose.

38 We think that an appropriate default position is that the existing AFS licence requirements, conditions and processes should apply to those digital assets that *are* financial products, and to businesses providing financial services in relation to those products.

Note: ASIC has modification and exemption powers, in certain circumstances: see Regulatory Guide 51 *Applications for relief* ([RG 51](#)) on ASIC modification and exemption powers.

39 The International Organization of Securities Commissions (IOSCO)’s recommendations in relation to crypto- and digital assets apply a principle of ‘same activity, same risk, same regulation/regulatory outcome’. Many international regulators have applied this principle. The Government’s proposed reforms adopt a ‘similar activity, similar risk, same regulatory outcome’ approach.

Note: See IOSCO, [Policy recommendations for crypto and digital asset markets](#) (PDF 696 KB), final report, November 2023 and [Regulating digital asset platforms](#) (PDF 927 KB), October 2023, p. 17.

Authorisations and information to be provided in proofs

40 Currently, we consider that the existing AFS licence authorisation (product and service) options in the licensing form are generally appropriate for digital asset businesses. An entity will select the mix of financial products and financial services they propose to offer in their licence application (e.g. if they wish to deal in digital assets that are securities they will need to select ‘deal’ and ‘securities’ in the licence application form).

- 41 We *generally* do not believe that the licensing forms need digital asset specific authorisations (e.g. to separate ‘digital assets that are securities’ from securities more generally). This recognises the principles-based approach in the Corporations Act. This would mean:
- (a) entities that already have an AFS licence will be authorised to undertake the various financial services relating to digital assets that are financial products already contained on their AFS licence; and
 - (b) entities that seek an AFS licence for digital asset related financial services will be authorised to provide financial services in relation to both *traditional* and *digital asset* versions of those financial products.
- 42 However, at this stage we think two new financial product authorisations could be considered for inclusion on an AFS licence:
- (a) *Derivatives*: We consider that it would be beneficial, no matter the outcome of the approach to proposal A3 (related to the potential example on wrapped tokens), to tailor licences that authorise financial services in relation to some digital assets that are derivatives that do not involve leverage or margin requirements. This tailoring would allow us to target the application process in recognition that some digital assets that are derivatives will not include risks associated with leverage and margining. If an entity indicates they will deal in derivatives that are digital assets that do not involve leverage or margin, the entity would not be authorised to provide services in relation to other derivatives (i.e. contracts for difference, options, perpetual futures) or digital assets that are derivatives involving leverage and/or margin (these would require the broader ‘derivatives’ authorisation).
 - (b) *Facility for making a financial investment*: Draft INFO 225 highlights the potential for some digital assets to be a facility for making a financial investment (under s763A and 763B of the Corporations Act), and not a specific type of financial product (e.g. under s764A of the Corporations Act). In ASIC’s current licensing approach, where a product does not meet an existing specific product type, an entity selects ‘miscellaneous financial facility’ (see Regulatory Guide 2 *AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application* ([RG 2](#)) at RG 2.156).
- 43 At this time, we also do not think we will need to publish any *new* or *additional* proofs for firms to provide with their AFS licence application: see Regulatory Guide 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs* ([RG 3](#)). Additional proofs are issued when we require further particulars from you to assist us with assessing your application. Whether additional proofs are issued depends on the nature of your application and which AFS licence authorisations you have applied for.

- 44 In many cases, ASIC issues further requisitions to applicants for additional documents or information. We intend to use this process to supplement the standard proofs. We will consider publishing some sample questions or topics that these requisitions may cover so that applicants can consider if they can be addressed within the existing proofs. We may also incorporate these questions as standard requisitions in the initial letter that we currently issue to acknowledge that we have accepted the application for lodgement. Some potential topics could include:
- (a) which digital asset types or related products you intend to offer, and which categories of financial products they likely are;
 - (b) further details on your cyber security arrangements;
 - (c) further details on asset-holding arrangements between you and your customer, and arrangements between you and external service providers (e.g. technology solutions, sub-custodians);
 - (d) additional evidence in meeting organisational competence; and
 - (e) on-boarding processes, including approach to KYC requirements, particularly when offering financial products to wholesale investors only (e.g. whitelisting addresses).

Standard AFS licence requirements

- 45 Our normal approaches to the key AFS licensee and ongoing requirements will apply to digital asset firms, including but not limited to:
- (a) the standard financial requirements contained in Regulatory Guide 166 *AFS licensing: Financial requirements* ([RG 166](#));
 - (b) the general obligation to have adequate compensation arrangements, as described in Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* ([RG 126](#));
 - (c) ensuring responsible managers have the organisational competence described in [RG 105](#);
 - (d) the requirements for providing personal or general financial product advice to retail clients described in Regulatory Guide 146 *Licensing: Training of financial product advisers* ([RG 146](#)).

Custodial and depository services

- 46 For entities providing custodial and depository services, the existing requirements as detailed in [ASIC Corporations \(Custody Standards for Providers of Custodial and Depository Services\) Instrument 2024/17](#) and summarised in Regulatory Guide 133 *Funds management and custodial services: Holding assets* ([RG 133](#)) will apply. These apply whether the custodial service relating to digital assets that are financial products is incidental or not under [RG 166](#).

- 47 This could mean some existing licensees (e.g. trustees of wholesale unregistered managed investment schemes) may need to reconsider their arrangements for custody of digital assets, where our updated guidance has prompted a reconsideration of their regulatory status.
- 48 Digital assets raise some unique custody issues. We have already provided some good practice guidance on custody of digital assets in INFO 225 and guidance remains in the updated version (also see paragraph 12(e) above).
- 49 We are aware that some digital asset businesses currently operate omnibus client accounts. We may consider extending the consideration of omnibus accounts (s912AAC(5) of the Corporations Act as inserted by [ASIC Instrument 2024/17](#)) to any digital asset that is a financial product. Omnibus accounts supported by record-keeping requirements are allowed for securities, derivatives and deposit-taking facilities.

Conflicts of interest

- 50 AFS licensees must have in place adequate arrangements for managing conflicts of interest to meet s912A(1)(aa) of the Corporations Act. Regulatory Guide 181 *Licensing: Managing conflicts of interest* ([RG 181](#)) details our guidance about the need to control, avoid and disclose conflicts of interest. At this time, we do not think this principled guidance needs to change for businesses providing financial services relating to digital assets that are financial products.
- 51 However, consistent with IOSCO's recommendations, we recognise that conflicts of interest may be more acute with digital asset firms because of the structure of these businesses. We view our approach in RG 181 as an appropriate starting point for the conflicts of interest requirements on AFS licensees. We note that additional conflicts of interest obligations apply when an entity is a participant in, or an operator of, a licenced financial market. We currently think elements of these additional conflicts of interest obligations are relevant to firms dealing in digital assets that are financial products.

Note: See IOSCO, [Policy recommendations for crypto and digital asset markets](#) (PDF 696 KB), final report, November 2023.

Internal and external dispute resolution

- 52 The existing requirements around internal and external dispute resolution will continue to apply without change to AFS licensees providing financial services to retail clients relating to digital assets that are financial products: see Regulatory Guide 271 *Internal dispute resolution* ([RG 271](#)) and Regulatory Guide 267 *Oversight of the Australian Financial Complaints Authority* ([RG 267](#)). We do not see any obstacles for entities providing financial services relating to digital assets that are financial products from adhering to these requirements.

Further work on financial market and CS facility licensing

- 53 We recognise that some service providers of digital assets that are financial products may be operating or seek to operate a financial market, and potentially a CS facility that may require licences from ASIC.
- 54 Our current view is that the legislative regime for financial markets and CS facilities is sufficiently flexible to cover a range of business models, including markets relating to digital assets that are financial products. This flexibility means obligations can be adjusted based on the offering.
- 55 Consistent with the current guidance, we have high expectations of entities operating a market and CS facilities with retail client participation. We will consider applications on a case-by-case basis, and will consider whether further guidance is needed dependent on how the digital assets sector evolves. The Reserve Bank of Australia is a co-regulator of CS facilities in Australia.

C Regulatory and financial impact

56 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance which:

- (a) provides protections for consumers dealing with entities providing services relating to digital assets that are financial products;
- (b) promotes integrity in the markets for digital assets that are financial products;
- (c) provides a pragmatic approach to licensing service providers; and
- (d) ensures digital asset service providers are regulated appropriately under the existing financial services regime.

57 Before settling on a final policy, we will comply with the Australian Government's Policy Impact Analysis (PIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options that could meet our policy objectives;
- (b) notifying the Office of Impact Analysis (OIA) if regulatory options are under consideration; and
- (c) preparing an Impact Analysis (IA) or an IA equivalent (Independent Review) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector.

58 All IAs are submitted to the OIA for approval before we make any final decision, or if an IA equivalent—to the OIA for agreement. Without an approved IA or agreed IA equivalent, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

59 To ensure that we are in a position to properly complete any required IA or IA equivalent, please provide us with as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition in s9.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
ASIC Instrument 2024/17 (for example)	An ASIC instrument (in this example numbered 2024/17)
AUSTRAC	Australian Transaction Reports and Analysis Centre
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 343 (for example)	An ASIC consultation paper (in this example numbered 343)
crypto-asset	A digital representation of value or contractual rights that can be transferred, stored or traded electronically, and whose ownership is either determined or otherwise substantially affected by a cryptographic proof
CS facility	A clearing and settlement facility as defined in s768A of the Corporations Act
DAF	Digital asset facility
DAP	Digital asset platform
DCE	Digital currency exchange
DDO (design and distribution obligations)	The obligations in Pt 7.8A of the Corporations Act
financial market	Has the meaning given in s767A of the Corporations Act, and includes a facility through which offers to acquire or dispose of financial products are regularly made or accepted

Term	Meaning in this document
financial product	<p>Generally, a facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition. In addition to the general categories above, this specifies certain things as being included or excluded from the definition.</p>
INFO 225 (for example)	An ASIC information sheet (in this example numbered 225)
IOSCO	International Organization of Securities Commissions
KYC	Know-your-customer
PDS	<p>A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s9 for the exact definition.</p>
Pt 7.8	A part of the Corporations Act (in this example numbered 7.8), unless otherwise specified
REP 705 (for example)	An ASIC report (in this example numbered 705)
retail client	A client as defined in s761G and 761GA of the Corporations Act and Div 2 of Pt 7.1 of the <i>Corporations Regulations 2001</i>
RG 166 (for example)	An ASIC regulatory guide (in this example numbered 166)
s912B (for example)	A section of the Corporations Act (in this example numbered 912B), unless otherwise specified
wholesale client	A client who is not a retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the <i>Corporations Regulations 2001</i>

List of proposals and questions

Proposal	Your feedback
<p>A1 We propose to update INFO 225, subject to feedback from this consultation. See draft updated INFO 225 in the attachment to this consultation paper.</p>	<p>A1Q1 Are there any topics or guidance that have not been included in draft updated INFO 225 that you think should be? Please provide details.</p> <p>A1Q2 Are there any topics or guidance that were included that you think should <i>not</i> have been included? Please provide details.</p> <p>A1Q3 Do you agree that the good practice guidance in INFO 225 directed to responsible entities is applicable to providers of custodial and depository services that provide custody of digital assets that are financial products? Are there any good practices that you would like added (e.g. on staking services)? Please provide details.</p>
<p>A2 We propose to include the worked examples as set out in draft updated INFO 225.</p>	<p>A2Q1 Do you have comments on any of the proposed worked examples? Please give details, including whether you consider the product discussed may/may not be a financial product.</p> <p>A2Q2 Are there any <i>additional</i> examples you would like to see included? Please give details of the suggested example(s), and why you consider the digital asset discussed may/may not be a financial product.</p> <p>A2Q3 For any of these examples, are there any unintended consequences? If so, what are these and what do you propose in response?</p>
<p>A3 We are considering whether to develop additional examples for INFO 225 on wrapped tokens and ‘stablecoins’ that may be financial products. We are seeking feedback on the practical implications for businesses.</p>	<p>A3Q1 Do you think it would be helpful to include an example of a wrapped token and/or a ‘stablecoin’ in INFO 225? If so, do you have any suggestions on the features of the potential examples in paragraphs 20-21?</p> <p>A3Q2 What are the practical implications for businesses (e.g. for issuers or intermediaries) in providing services in relation to wrapped tokens and/or ‘stablecoins’ that are financial products? Please give details.</p> <p>A3Q3 Would any transitional provisions or regulatory relief be needed to facilitate transition from regulation of a wrapped token or a ‘stablecoin’ as a financial product under the current law to the Government’s proposed approaches to ‘stablecoins’ and wrapped tokens? Please give details.</p>

Proposal	Your feedback
<p>B1 We are considering a class no-action position for digital asset businesses that are in the process of applying for or applying to vary an AFS licence, Australian market licence or clearing and settlement (CS) facility licence. We propose that it would have the following scope and conditions:</p> <ul style="list-style-type: none"> (a) it would only apply to financial services in relation to digital assets that are financial products; (b) it would only apply to persons that had commenced operations in Australia before the date of this consultation paper; (c) for AFS licence applications, it would apply from the time a person lodges a licence application or variation application (that has not been rejected as incomplete or deficient in any material respect) to cover their digital asset products and services, provided they lodge the application no later than six months from the date our updated INFO 225 is published; (d) for an Australian market licence or a CS facility licence, it would apply from the time a person informs ASIC in writing of its intention to lodge a licence application or variation application to cover their digital asset products, provided they inform ASIC no later than six months from the date our updated INFO 225 is published, and provided the licence application or variation application is lodged within 12 months of the date the person informed ASIC in writing of its intention; (e) it would last until the licence application has been either withdrawn or decided upon (i.e. a licence has been granted or refused); (f) the person would have to be a member of the Australian Financial Complaints Authority (AFCA); (g) if the person is not an Australian company or resident, it would have to register as a foreign company (including appointing a local agent under s601CF of the Corporations Act); (h) the no-action position would not be available in relation to crypto lending/earn products and derivatives referencing digital assets (other than wrapped tokens—see proposal A3); and (i) ASIC may notify a person in writing that the no-action position does not apply to them (from the date of the notice). 	<p>B1Q1 Do you agree that ASIC should progress with a class no-action position as proposed here? If not, please give reasons.</p> <p>B1Q2 Are the proposed conditions appropriate? Are there any additions or changes to the proposed conditions that will be more effective for investor protection?</p> <p>B1Q3 Do you agree that the class no-action position should be dependent on a person lodging an AFS licence application or written intention to apply for a market and/or CS facility licence? If not, please explain and suggest an alternative.</p> <p>B1Q4 Should there be a deadline for applying for an AFS licence or commencing pre-lodgement discussions in relation to a market and/or a CS facility licence? Please provide reasons.</p> <p>B1Q5 For product issuers, should the no-action position extend to other obligations—for example, to prepare a Product Disclosure Statement (PDS)? Why or why not?</p>

Proposal	Your feedback
<p>B2 The existing AFS licence processes, regulatory guides and conditions will apply to persons providing financial services in relation to digital assets, including those that are based on the type of financial product involved.</p>	<p>B2Q1 Do you agree that the same regulatory obligations should apply to digital asset and traditional financial products of the same category (e.g. securities, derivatives)? Please explain your response and provide specific examples.</p> <p>B2Q2 Are there any aspects of ASIC's guidance that may need to be tailored for digital assets that are financial products?</p> <p>B2Q3 Do you agree that the approach proposed for custodial and depository services is appropriate for holding custody of digital assets? Do you agree that extending the omnibus client accounts is appropriate for digital assets that are financial products? Please explain, providing examples, if relevant.</p> <p>B2Q4 In relation to organisational competence, what are your views on what ASIC could consider in applying Option 5 in Regulatory Guide 105 <i>AFS licensing: Organisational competence</i> (RG 105) for entities providing financial services in relation to digital assets that are financial products?</p>
<p>B3 We propose to tailor licence authorisations in relation to certain digital assets that are derivatives, and for digital assets that are 'miscellaneous financial investment products'.</p>	<p>B3Q1 In relation to the authorisations sought during an AFS licence application, do you agree that the existing authorisations are generally appropriate to digital asset service providers?</p> <p>B3Q2 Do you agree with the proposal to tailor the derivatives and miscellaneous financial investment products authorisations? Are there any others that you would recommend?</p>