coinbase

To:
Digital Assets Team
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Date:
28 February 2025

Coinbase Global, Inc. (together with Coinbase Australia Pty Ltd, (**Coinbase**) appreciates the opportunity to respond to CP381 Updates to INFO 225: Digital assets: Financial products and services (**the Consultation**) published by the Australian Securities & Investments Commission (**ASIC**).

Coinbase recognises that the Government's proposed Digital Asset Platform (**DAP**) and Payments Licensing frameworks are central to protecting consumers while fostering a modern, innovative digital economy. We support these efforts as the most effective means of creating a fit-for-purpose regulatory framework for these technologies in Australia. In our view, ensuring a smooth transition for the industry into these frameworks is paramount to ensure that their goals are met..

Given that ASIC's current amendment process is pre-empting a concurrent Government reforms effort, we are concerned that this approach risks introducing operational inconsistencies and market uncertainty. Such uncertainty could impede investment, stifle innovation, and hinder industry access to essential banking services. Accordingly, we recommend that ASIC defer any updates to InfoSheet 225 until after the Government's reforms are in effect.

We anticipate that ASIC will continue to play a central role in regulating the digital asset industry under the forthcoming DAP framework and look forward to engaging throughout its implementation. By aligning closely with the Government's process, we believe ASIC can help Australia achieve regulatory clarity that safeguards consumers and recognises the diverse use cases and societal benefits of digital assets.

Yours sincerely,

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Introduction

Coinbase welcomes the opportunity to respond to ASIC's Consultation on updates to InfoSheet 225. Since launching in Australia in 2022, we have actively engaged across the Australian Government on the importance of providing regulatory clarity to fully realise the potential of blockchain technology and Australia's digital transformation. Most recently, we responded to the Australian Treasury's proposal paper[1] on *Regulating digital asset platforms*. The Treasury's proposed reforms represent an important culmination of work by the Government to implement a fit for purpose regulatory regime for digital assets.

We share a mutual imperative with the Government: ensuring that the future framework for digital asset regulation in Australia provides both effective protections for consumers and recognises the multiplicity of use cases for digital assets as well as the broad societal benefits of promoting a modern, innovative digital economy. Coinbase agrees with the Government's proposal to anchor the regulatory framework on centralised custody arrangements, requiring such arrangements to obtain an Australian Financial Services License (**AFSL**) when applicable. As such, we anticipate that ASIC will play a central role in regulating industry in the near future.

We therefore appreciate ASIC's public commitment to working with the Government to prepare for both the DAP and Payments licensing reforms[2] (**the Government reforms**) These will require intermediaries like Coinbase to obtain an AFSL, regulated by ASIC, and will regulate stablecoins as Stored Value Facilities, requiring oversight of ASIC, APRA or RBA depending on their scale. We encourage ASIC to continue working with the Government to align on future reforms and facilitate a smooth transition for the digital asset industry in Australia.

However, we are concerned that in an attempt to provide clarity to industry through this Consultation and in its public statements, ASIC has introduced confusion to the market. Because ASIC has acted ahead of the Government finalizing its reforms, we fear that any final Government reforms may be operationally and legally incongruous to the updates contemplated for Information Sheet 225 (**INFO 225**).

We do not believe that there are any pressing risks or consumer harms that are addressed by ASIC's course of action. Further, when the Government passes legislation, it will be crucial for ASIC to resource the implementation of those reforms - including licensing many new entities. By pre-empting the Government reforms process, ASIC has introduced a level of uncertainty that will further stifle investment into Australian

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[1] Australian Treasury, "*Regulating Digital Asset Platforms: Proposal Paper*," Australian Government the Treasury (October 2023).
[2] Australian Treasury, "*Regulating Payment Service Providers: Second Consultation Paper*," Australian Government the Treasury (December 2023)

businesses, inhibit innovation, and stall industry efforts to gain requisite banking and insurance services.

Coinbase therefore recommends that ASIC delay any updates to INFO 225 until after the Government's reforms are in effect, and consult further at that time if needed. If, despite our recommendation, ASIC believes it must clarify that certain digital assets are financial products, we recommend it also provides broad regulatory relief to avoid the industry and ASIC wasting resources on overlapping regimes.

Despite this recommendation, we recognise that the Consultation explores important regulatory considerations. Given the importance of this discussion, we appreciate the opportunity to provide feedback on the concepts outlined in the Consultation.

High Level Summary of Coinbase Recommendations

1. Maintain regulatory clarity for intermediaries

Regulatory certainty is critical for digital asset intermediaries to operate effectively. To provide this clarity, ASIC should reaffirm that Bitcoin—both the network and the token—is not a financial product but are "more akin to a commodity"[3]. Extending this classification to similar assets, such as ether and the Ethereum network, as well as digital assets with similar features, will help ensure that intermediaries can navigate the evolving regulatory landscape with confidence. This proactive approach will prevent unnecessary ambiguity while Government reforms are still being implemented.

2. Stay the path on stablecoin regulation

We strongly support the Government's approach to regulating stablecoins under the Payments System Modernisation Framework and encourage ASIC to adopt a consistent view. Classifying stablecoins as Payments Stablecoins—a subcategory of Stored Value Facilities—ensures appropriate oversight while affirming that tokens representing stablecoins are not financial products. This approach aligns with global regulatory trends and provides clarity for industry participants.

ASIC, as part of the Council of Financial Regulators, demonstrated foresight in recommending this framework, and we commend its leadership in shaping early-stage policy.

As stablecoins are cross border by nature, global regulatory consistency is critical. Comparable jurisdictions recognise that stablecoin oversight requires Government reforms. In these markets, regulators have allowed established stablecoins and

[3] Australian Securities and Investments Commission, *Senate Inquiry into Digital Currency: Submission by the Australian Securities and Investments Commission* (December 2014), https://www.aph.gov.au/DocumentStore.ashx?id=9c1b9b2b-4a4b-4a3b-8b1e-3a0aebc7e3d6&subId=298667.

intermediaries to continue operating while reforms are being developed. To prevent regulatory misalignment, ASIC should adopt a similar approach. As new frameworks emerge and international reciprocity becomes standard practice, aligning Australia's regulatory treatment of stablecoins with global norms will provide clarity, ensure competitiveness, and prevent unnecessary market fragmentation, allowing consumers to reap the benefits.

3. Align staking regulation with international norms

We support the Government's proposal to regulate staking as a service under the DAP framework, ensuring that it remains a licensed service within the broader regulatory framework. This approach aligns with global standards set by jurisdictions such as the UK and the EU, reinforcing Australia's position as a forward-thinking regulatory environment for digital assets.

Recent legislative developments in the UK confirm that staking services do not constitute Collective Investment Schemes—the equivalent of Managed Investment Schemes (**MIS**s) in Australia[4]. Additionally, future UK legislation will formally integrate staking into the Virtual Asset Service Provider licensing regime. In the EU, the European Securities and Markets Authority (**ESMA**) has clarified that staking is an ancillary service to custody, presenting limited additional risks[5].

To maintain regulatory consistency and support industry growth, ASIC should facilitate a smooth transition for staking services in Australia. Whether ASIC updates INFO 225 or not, we suggest that issuing a class order permitting native token staking as a low-risk ancillary service (available to users who already own and hold these tokens with intermediaries) would provide much-needed clarity. This approach would align Australia with global best practices, allowing intermediaries to offer staking services without triggering unnecessary MIS obligations while ensuring customer discretion remains paramount.

4. Avoid regulating technological solutions as financial products

ASIC should avoid bringing key technological components of digital asset infrastructure, including wrapped tokens and non-custodial wallet software, within the financial regulatory perimeter. As blockchain technology continues to evolve, innovators are developing solutions to enhance usability, interoperability, and the overall user experience while preserving the benefits of permissionless networks. Development of these technological solutions will be impeded if subjected to financial services regulation developed for entirely different products.

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[4] UK Government, "*The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2025*," Statutory Instrument 2025 No. 17, gov.uk (January 2025).
[5] European Securities and Markets Authority, *Questions and Answers: Publications and Data*, esma.europa.eu (June 2024).

Wrapped tokens function as a service that allows users to utilize their assets on different blockchains. In a 1:1 wrapping arrangement, the original token is locked while a new token is minted to represent it on another network. Users can redeem the wrapped token at any time to unlock the original asset. This process mirrors an exchange of digital currency or a provision of services rather than the creation of a derivative.

For example, wrapped tokens are expanding the utility of digital assets, enabling them to be used beyond their native environments or to be used in more ways in those environments. Wrapped tokens are a technological solution to a novel technological problem, attempting to shoe-horn them into the AFSL regime as it stands is not the correct policy solution. Development of policy for wrapped tokens should be left to the Government.

Similarly, developments in non-custodial wallet software are improving the user experience of holding and transferring digital assets while ensuring users retain full custody. Expanding the regulatory perimeter to capture software services that simply enhance usability would be inconsistent with the Corporations Act, which focuses on the provisioning of arrangements that are financial products, and the regulatory treatment in comparable jurisdictions.

To maintain a balanced and globally competitive regulatory approach, ASIC should remove references to software services from the Consultation. This will ensure that regulation remains proportionate and does not inadvertently stifle innovation in Australia.

Targeted Response

As stated above, we recommend that ASIC defer to the Government reforms and pause this amendment process. Nonetheless, in this section, we respond to select Consultation questions, with additional commentary on certain topics that we view as important for ASIC to consider.

A1Q1 Are there any topics or guidance that have not been included in the draft updated INFO 225 that you think should be? Please provide details

Just as the Consultation considers what *is* a financial product and therefore subject to certain licensing obligations, ASIC should clearly define what is *not* a financial product.

Historically, when ASIC has sought to provide clarity on the applicability of Australian financial services laws to digital assets, it has done so by submitting that certain assets do *not* fall within the legal definition of a financial product[6]. This has provided industry with a degree of certainty upon which the digital assets ecosystem has continued to

[6] Australian Securities and Investments Commission, "*Senate Inquiry into Digital Currency: Submission by the Australian Securities and Investments Commission*," (December 2014).

develop. Now, over a decade later, the Consultation coupled with ASIC's recent public commentary have threatened assurance of ASIC's position[7].

We therefore suggest that ASIC reaffirms its original stance on Bitcoin the network, and bitcoin the token, and extend it to Ethereum the network and its native token ether, as well as digital assets with similar features. This will help ensure that intermediaries can navigate the evolving regulatory landscape with confidence. It would also confirm the core policy principle that the Corporations Act regulates contracts and arrangements between counterparties rather than technologies. Where there is no arrangement or counterparty, there can be no financial product.

Similarly, ASIC should provide unambiguous clarification that intermediary obligations for secondary service providers are not triggered where a token is not a financial product. We believe this is materially important to several of the considerations set forth in the Consultation including stablecoins, wrapped tokens, and non-cash payment facilities. Both in established Australian precedent[8], as well as in global approaches we've seen, it has been critical to clearly define whether a token itself gives the holder a legal right such that the token amounts to a financial product when determining applicable intermediary obligations.

A1Q2 Are there any topics or guidance that were included that you think should not have been included? Please provide details.

Coinbase suggests that topics and guidance that overlap with the proposed Government reforms, or are at odds with treatments in comparable jurisdictions, should not be included in any proposed updates to INFO 225. With this in mind, where there is ambiguity regarding the application of the current Australian financial framework, prior to the implementation of Government reforms, ASIC should take a narrow view of its remit or provide clear 'No Action' Class orders. These suggestions will ensure a smooth transitionary period for the industry and its customers while Government reforms are drafted and implemented.

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[7] Amitoj Singh, *A Fire Alarm Interrupted an Aussie Crypto Summit. The Symbolism Wasn't Missed by a Concerned Industry*, Coindesk (September 25, 2024).
[8] Australian Securities and Investments Commission, "*Australian Securities and Investments Commission v BPS Financial Pty Ltd*," Federal Court of Australia (May 2024).

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.

There are challenges in applying all of the custodial and depository requirements to digital asset intermediaries involved in financial products. We do not agree that the good practice guidance in INFO 225 directed to responsible entities should be applied in its current form and suggest that extensive, separate, consultation on these topics would need to be undertaken given the different risks and market structures involved. We discuss these challenges in detail in our answers under Section B2Q3.

In respect of staking as a service, see response in A1Q2 where we suggest omitting it as it is captured by the Government's DAP framework, which is in line with the treatment of staking services by similar jurisdictions.

Worked examples

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.

We commend ASIC on providing the worked examples in the attachment. We suggest that ASIC should clarify within the examples what feature or combination of features increase the likelihood that the arrangements are a financial product. The majority of tokens that are important in the ecosystem are not sufficiently described in any of these examples due to the wide variety of actions and/or rights that can be accessed by a token holder under each of the broad classes discussed.

We suggest that the examples should focus on the key features that define the financial product. This style of guidance has been provided by ASIC previously. For example, in RG 121 *Doing financial services business in Australia*, where the examples contain different levels of activity along with ASIC guidance as to the likelihood of each example being considered 'inducing' conduct.

As per our answer to A1Q1, we suggest that if INFO 225 is updated, ASIC should provide unambiguous clarification that intermediary obligations for secondary service providers are not triggered where a token is not a financial product. This could be done in the example section. It is separate to the distinction of whether the asset is a financial product and is critical in assessing intermediary obligations.

Example 1 & Example 3 - Exchange tokens and Gaming NFTs

We recommend giving more detail on the separation between these two examples. Many Exchange Tokens take the form of utility tokens allowing holders to participate in certain services or receive preferential treatment within the platform ecosystem; this does not appear to be distinct from many gaming NFTs providing similar benefits on their platforms as set out in Example 3.

If the distinction is in the marketing of the tokens, we suggest highlighting this as the differentiating factor by adding a secondary example to Example 1. In this suggested example, the exchange does not market or represent the token as being for investment purposes though grants participation and preferential treatment in the exchange ecosystem. However, the token is still traded on secondary markets for speculative purposes, with the price appearing to be influenced by general sentiment towards the exchange. We recommend ASIC clarifies whether (a) the participation and preferential treatment aspect of the token could constitute a return; and (b) whether the incidental speculative trading that results independently of the exchange's actions would be a factor, or would otherwise be considered in the same way as Example 3.

Example 2 - Native Token Staking Service

We recommend that ASIC use this Example to align the treatment of staking services with the proposed Government reforms, as well as, those of likeminded jurisdictions such as the UK and EU, which do not treat these products as a collective investment scheme.[9] [10] Clarifying that pass-through staking services for omnibus accounts are not financial products, will allow intermediaries to facilitate staking for their customers at their customers discretion. We note that this position would be consistent with recent Australian case law on similar services involving connecting users to external protocols[11].

In the native token staking service example ASIC has linked the arrangement to that of a MIS, implying that entities allowing customers to stake their assets require an AFSL. Not only is this inconsistent with the Government reforms, a potential consequence of this approach will be that entities withdraw these services from Australian consumers until the Government reforms are in effect. This removes a benefit from consumers who already own the assets and will result in pushing consumers to high risk offshore service providers or DIY solutions that are not focused on providing consumer protection.

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[9] UK Government, *Financial Services and Markets Act 2000 (Amendment) Order 2025*.
[10] European Securities and Markets Authority, "*Final Report Guidelines on the conditions and criteria for the qualification of cryptoassets as financial instruments*," esma.europa.eu (December 2024).
[11] Australian Securities and Investments Commission, "*Australian Securities and Investments Commission v Web3 Ventures Pty Ltd*," Federal Court of Australia (February 9, 2024).

Further, we invite ASIC to reconsider the characterisation of holding digital assets on an omnibus basis as a form of pooling or use in a common enterprise. The use of omnibus accounts by exchanges is an ancillary feature of operations of the exchange platform which would occur regardless of whether a customer chooses to stake their digital assets or not. There is typically no change in ultimate ownership of the tokens, and users' holdings and returns are treated by the exchange on an individualised basis. This arrangement should not constitute a form of pooling or use in a common enterprise, as contemplated in the definition of a MIS.

If ASIC considers the specific example provided is a MIS we recommend providing class order relief that aligns regulatory treatment of staking as a service in Australia with our peer jurisdictions, allowing platforms to continue providing staking services to clients. This will ensure a smooth transition between now and the implementation of the Government reforms and avoid causing consumer detriment via the arbitrary application of unsuitable regulation.

Example 4 - Yield-bearing Stablecoins

The example provided mentions that the funds from token holders have created "several benefits" and that such benefits suggest that the stablecoin, and its token, should be classified as a MIS and units in a MIS respectively. We suggest that the creation of appropriate policy settings for stablecoins is the role of the Government and will ensure more appropriate settings for this new product type.

If ASIC provides this example in an update to INFO 225, we recommend clarifying further which particular features or benefits in the example will cause the stablecoin to be at a higher risk of a MIS or financial product characterisation specifically. See further, our response in A2Q1.

Where the benefits are confined to arrangements between the issuer and tokenholders, we invite clarification on the regulatory implications for secondary intermediaries (e.g. distributors) of the stablecoin. See further, our response in A1Q1.

Further, we disagree with the statement that the token's stability in value and use for payments should be construed as a "benefit" contemplated for the purposes of MIS characterisation. The token being stable in value is a function by design or product utility, as opposed to being some form of financial or other benefit produced by a scheme. It is also conceivable that the adoption of the stablecoin for payments arises organically through increased adoption or the creation of an overlaying arrangement by a different party as opposed to being something within the control or intention of the issuer.

Under ASIC's proposals in this consultation, there is potential for stablecoins to be regulated as multiple financial products, for example an interest in an MIS and a

Non-Cash Payment Facility (**NCPF**). This raises practical challenges such as potential inconsistent treatment by secondary intermediaries, the likelihood of defective or misleading disclosure and licensing complications.

Example 13 - Non-custodial wallets

We disagree with the conclusion that the non-custodial wallets are NCPFs and recommend ASIC clarify that although non-custodial wallets may technically provide the ability to transfer value and they may be used to make a payment, the payment feature is merely incidental. We believe that description of a non-custodial wallet "*...allow[ing] a client to instruct Company M to transfer their token to another address or digital asset wallet issued by Company M*" may not describe a non-custodial wallet in the sense it is usually referred to.

A true non-custodial wallet is merely software to assist users to access various functionalities on the blockchain; they are not specifically designed as part of a payment system or facility.[12] As the non-custodial wallet software is merely incidental to the transfer of value, i.e. the customer could use any other wallet software or interact with the network directly to transfer value, the financial product designation of NCPF does not apply.

The NCPF designation generally refers to arrangements where an entity receives value from a client and, in accordance with the arrangement that makes up the 'facility', the client is able to direct the entity to transfer that value. The risk lies in the intermediary holding value for the client which the client then relies solely on the entity to direct for them. Without the entity the payment cannot be made. This is not the case in relation to non-custodial wallets where the entity processing messages from software is merely incidental to the transfer. The transfer itself is directed by the user and the value transferred is never controlled by the intermediary.

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.

For completeness, ASIC should include examples where merely holding a token does not convey a legal right to the holder such that the token amounts to a financial product. This is the case with many digital assets and clarification that to constitute a financial product, holding the token must be accompanied by a financial arrangement with the issuer.

[12] Australian Securities and Investment Commission, "*Digital assets: Financial products and services*," (December 2024).

We also make suggestions in our response to A1Q2 to include examples of bitcoin and ether which form the majority of the digital asset market capitalisation. These examples would note that where there is no identifiable issuer there cannot be a financial product, reaffirming ASICs position since 2014, and would extend to similar digital assets.

A2Q3 For any of these examples, are there any unintended consequences? If so, what are these and what do you propose in response?

Where application of financial services laws is not straightforward or an unsuitable regime is implemented, good actor entities may cease to offer services to Australians which may inadvertently cause harm to consumers. Consumers may seek out more risky offshore intermediaries for access or cease to be able to access benefits that they would otherwise have received.

Yield bearing stablecoins and native token staking-services are the most stark examples. If ASIC classifies these as MISs, issuers and intermediaries will likely withdraw any benefits they would have otherwise provided the consumer while awaiting the Government's reforms. Consumers will still hold the tokens but receive none of the associated benefits.

We propose that ASIC pause any updates to INFO 225 and continue working with the Government on the DAP and Payments Licensing frameworks to create fit-for-purpose regulation for the industry.

If ASIC decides to update INFO 225, it should be accompanied by a broad set of Class Orders that provide relief until the Government DAP and Payments Licencing frameworks are in place, recognising that consumers will access digital assets and that onshore entities are best to provide this access in the interim so they may retain the broader protection of Australian law. Ultimately, when the Government's proposed frameworks are implemented, DAPs will require licensing and supervision under ASIC, affirming ASIC's supervisory role in the ecosystem.

Stablecoins and Wrapped tokens

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?

Coinbase suggests that updating ASIC guidance on wrapped tokens and stablecoins is unnecessary at this stage as the upcoming Government reforms cover these topics. Given the complexity of the issues and the unsuitable nature of the current regulatory framework we suggest that deferral to Government is appropriate. This would also reflect

the approach taken internationally in comparable jurisdictions. With this context, we provide suggestions below if ASIC does include guidance on stablecoins and wrapped tokens.

Consistent with our response to A2Q1, Coinbase recommends that ASIC clarify the features of stablecoins and wrapped tokens that would designate them as NCPFs and derivatives, respectively. We suggest specifying the particular features that raise financial product concerns.

Wrapped tokens function as a service that allows users to utilize their assets on different blockchains. In a 1:1 wrapping arrangement, the original token is locked while a new token is minted to represent it on another network. Users can redeem the wrapped token at any time to unlock the original asset. This process mirrors an exchange of digital currency or a provision of services rather than the creation of a derivative.

A wrapped token does not meet the definition of a derivative under Section 761D(1) of the Corporations Act 2001 as it represents beneficial ownership of the underlying asset rather than a financial instrument that derives its value from another. The redemption process follows a fixed 1:1 ratio, meaning the amount returned does not fluctuate based on external factors. While market prices of the original and wrapped tokens may differ, this does not alter the fundamental mechanics of redemption.

Additionally, the ongoing minting and redemption of wrapped tokens constitute a service arrangement rather than a derivative. Under Section 761D(3)(b), agreements for the future provision of services are explicitly excluded from the definition of derivatives.

This can be the case for bridging between networks but is also very common on networks where new uses of tokens can be unlocked by 'wrapping' them and representing them in a different format. This could be due to limitations in the initial programing of the network. This suggests that these services are purely technical in nature, and should not be regulated under financial services laws.

For stablecoins, Coinbase recommends that ASIC consider the distinction between a stablecoin token and any arrangements that constitute the facility through which a non-cash payment is made (consistent with ASIC vs BPS Financial[13]). Merely holding a token does not necessarily convey the rights to an NCPF as this depends on the arrangements between the token holder and the issuer. This is also consistent with the proposed Government Payments Licensing framework where the token representing stablecoins will not be considered a financial product, thus not triggering secondary service obligations for intermediaries.

[13] Australian Securities and Investments Commission, *ASIC v BPS Financial Pty Ltd.*

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.

If wrapped tokens and stablecoins are classified as financial products there would likely be major implications for intermediaries as well as innovators in Australia. Intermediaries would need a variety of AFSL authorisations while anyone innovating to bring interoperability and stable assets to blockchain technology would likely need to become an issuer.

Wrapped tokens are important for scaling blockchain capabilities and allowing for cross chain interoperability. Much like the ability to represent the same share on different registries or within the ASX order books the ability to represent the same asset across different technological solutions drives efficiencies and competition. Defining all wrapped tokens as derivatives would require any intermediary to have an AFSL, drastically increasing the cost of innovation with minimal benefit to consumer protection – see response to B2Q1. For intermediaries, there will be additional difficulties where wrapping agents are code only, or are situated outside Australia and do not provide standard form disclosures or other materials.

If stablecoins, including the token, are considered an NCPF, intermediaries will face many complexities regarding licensing and related obligations. To provide clarity, we recommend that ASIC clearly state that the facility in an NCPF arrangement is non-transferable, as it involves a direct arrangement between the issuer and its client.

A person cannot 'own more' of a NCPF, thus the idea of 'making a market' in NCPFs is not possible and this is reflected in the fact that this does not currently exist as an AFSL authorisation. Ambiguity on this topic in the Consultation and in recent public statements from ASIC has created uncertainty across the Australian Financial industry. Likewise, Australian Markets and Clearing and Settlement Facility licensing is also inapplicable to NCPFs.

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.

We commend the foresight shown by ASIC in A3Q3 in recognising that transitional arrangements or relief may be required. Coinbase agrees that an over-broad application of the current, unsuitable, framework would warrant this.

Where ASIC believes wrapped tokens or stablecoins constitute a financial product, Coinbase recommends creating 'No Action' Class Orders covering their issuance and other related activities. This would demonstrate ASIC's commitment to supporting the Government's upcoming reforms while allowing these important foundations of the digital asset ecosystem to continue to deliver services and value to users.

Treating stablecoins as a financial product would be a departure from the prevailing regulatory treatment of stablecoins globally and would put Australia at odds with its international counterparts. In comparable jurisdictions like the EU, UK and US, there has been a consensus that the appropriate regulation of stablecoins requires Government reforms. In these jurisdictions, established stablecoins and intermediaries providing access to them have been allowed to continue providing their products and services while reforms are being drafted and implemented.

We suggest that ASIC follows suit and avoids creating confusion where there is an agreed way forward. As new regimes emerge and reciprocity is included, it would be in Australia's interest to align its regulatory treatment of stablecoins to international norms. Collaboration on stablecoin rules will unlock further utility for cross border settlement and other future use cases, which may be inhibited by classifying stablecoins as financial products.

The Class Orders should include relief past and future actions by 'good intent' actors where consumer protections have been upheld and no harm has been caused, up to the point of application of Government reforms. These would include entities that have provided disclosures to consumers about the risks associated with these tokens such that consumers are able to make more informed choices pending future legislation. Coinbase recommends that any proposal of class order relief be open to further consultation and comment.

'No Action' Class order

B1Q1 Do you agree that ASIC should progress with a class no action position as proposed here? If not, please give reasons.

We support the proposal for a *'No Action' Class Order*, as it will help reduce uncertainty around enforcement risks for general business operations and enable the industry to focus on compliance efforts ahead of the introduction of the DAP framework.

Given the complexities highlighted in the consultation—particularly regarding stablecoins and wrapped tokens—ASIC should implement a comprehensive set of *'No Action' Class Orders* to provide regulatory certainty. The diversity of legal interpretations on these

issues underscores the need for clear guidance to prevent regulatory fragmentation and unintended compliance burdens.

By issuing broad *'No Action' Class Orders*, ASIC would reinforce its commitment to supporting the Government's upcoming reforms while ensuring that critical components of the digital asset ecosystem can continue to operate effectively. This approach would provide much-needed stability for market participants while aligning Australia's regulatory stance with international best practices.

B1Q2 Are the proposed conditions appropriate? Are there any additions or changes to the proposed conditions that will be more effective for investor protection?

The current proposal lacks clarity on whether *'No Action'* relief will apply to all conduct - both past and ongoing - by a market participant. To ensure regulatory certainty, ASIC should explicitly extend *'No Action'* Class Orders to cover past and future actions of good-faith actors, provided they have upheld consumer protections and not caused harm. As discussed in B1Q3 in more detail we also think relief should not be limited to businesses that apply for a licence.

As noted in our response to A3Q3, this approach would ensure that industry participants operating responsibly are not penalised for actions taken before the implementation of Government reforms. Clear guidance on this issue is essential to facilitate a smooth transition to the new regulatory framework.

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.

The *'No Action'* position should not be limited to businesses that apply for a licence. Instead, it should also extend to businesses that have reasonable grounds to believe that they *do not require* an AFSL, markets licence, or clearing and settlement (**CS**) facility license.

Additionally, ASIC should extend *'No Action'* relief to businesses that formally notify ASIC of their intention to wind down operations in Australia within a reasonable time frame - such as 12 months - allowing them to ensure a smooth transition for their customers. Providing this broader relief will reduce unnecessary regulatory uncertainty and facilitate an orderly transition for all market participants.

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.

ASIC should pause updates to INFO225 and continue collaborating with the Government to finalise the reforms. Requiring businesses to commence licensing applications before these frameworks are in place risks inefficient use of both ASIC and industry resources. Additionally, there is a possibility that licensing assessments may be underway when Government reforms are introduced, potentially rendering those assessments unnecessary.

Once the DAP and Payments Licensing frameworks are implemented, any remaining requirements for Australian Financial Services (**AFS**) licences, Australian market licences, or CS facility licences should be accompanied by a reasonable transition period. We recommend ASIC provide:

- **At least 12 months** for AFSL applications
- **At least 18 months** for Australian market and CS facility license applications

The proposed update to INFO225 marks a significant shift in ASIC's interpretation of its regulatory perimeter and expectations regarding licensing. A reasonable transition period is essential to allow industry participants to make necessary adjustments, including corporate restructuring, hiring appropriate personnel (such as responsible managers), and updating internal systems to meet Australia-specific regulatory requirements.

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?

We commend ASIC on identifying that the *'No Action'* position will need to extend to other obligations for issuers. This relief should cover all obligations that may apply to issuers under ASIC's expanded interpretation of its regulatory remit. Given the significant shift in regulatory expectations, a reasonable transition period is necessary to allow affected entities to adjust their systems and processes accordingly. We recommend a minimum transition period of 12 months.

Additionally, intermediaries should be granted long-term, standardised relief from disclosure obligations (such as issuing a Product Disclosure Statement, PDS) where the issuer is not based in Australia. ASIC's proposed approach in the consultation deviates significantly from international norms, making it unlikely that issuers will provide tailored disclosures for the Australian market. A more appropriate approach would be to extend relief similar to that outlined in Regulatory Guide 72 (**RG 72**) for internationally issued securities.

Finally, where no identifiable issuer exists, we assume that these obligations do not apply. We recommend ASIC also clarify this point.

Application of regulatory framework

B2Q1 Do you agree that the same regulatory obligations should apply to digital assets and traditional financial products of the same category (e.g. securities, derivatives)? Please explain your response and provide specific examples.

Coinbase agrees that when an asset qualifies as a financial product and the associated risks warrant regulatory oversight, the same obligations should generally apply. In Australia, financial regulatory policy governs arrangements between identifiable parties that create a financial product. However, where no such arrangements exist and no identifiable counterparties are involved, it is unlikely that a financial product is present. Applying regulatory obligations arbitrarily—particularly in cases where there is no issuer or where a service extension introduces little to no additional risk—deviates from global best practices.

Attempts to impose regulatory requirements in these scenarios may create unnecessary compliance burdens, remove consumer benefits, and limit market access—ultimately undermining the consumer protections that regulation is intended to provide. To maintain alignment with international frameworks, ASIC should ensure that its regulatory approach remains risk-based and outcome-driven, avoiding the misapplication of financial product obligations where they do not clearly serve to protect consumers.

Some examples of where the applications of obligations are complex include:

Product disclosures and/or continuous disclosure requirements

Intermediaries:
Requiring an Australian intermediary to provide product disclosure for a token issued by an international entity would be inappropriate and very difficult, if not impossible, in practice. Unlike traditional financial products, there is no universal consensus on the regulatory treatment and disclosure obligations for token issuers.

If an international issuer is not required to produce disclosure documents in their home jurisdiction, an Australian intermediary would have no means to obtain or verify such documentation. Imposing this obligation would create a high risk of the intermediary relying on publicly available information that may be incomplete, inaccurate, or untimely—ultimately increasing, rather than mitigating, consumer harm. A better alternative would be to ensure that customers know of these risks while giving them the high level facts of what the asset is.

To align with the *"same activity, same risk, same regulatory outcome*[14]*"* principle endorsed by international standard-setting bodies, ASIC should ensure that product disclosure obligations remain proportionate and do not place undue burdens on Australian intermediaries when issuers themselves are not subject to equivalent requirements in their jurisdictions.

Stablecoins:

As regulatory regimes for stablecoins emerge, we are seeing a departure from requiring traditional financial product disclosure obligations. Instead, bespoke regimes are emerging that tailor disclosure obligations to the unique risk profiles and operational characteristics of stablecoins, signaling a move toward more adaptive and specialized oversight.

Requiring traditional disclosure documents for listing in Australia would create unnecessary barriers, preventing Australians from accessing stablecoins that are often lower risk compared to more volatile tokens not considered financial products. ASIC should ensure that disclosure requirements for stablecoins remain proportionate to their actual risk profile, avoiding undue restrictions on access to well-regulated digital assets.

Issuer-less Tokens:
Similar issues arise for tokens where there is no issuer. The Government DAP proposal addresses disclosure obligations for Issuer-less tokens, we encourage ASIC to support it.

RG 72 currently deals with similar disclosure issues for foreign issued securities. We suggest a regulatory guide with a similar amount of relief would need to be created to cover the products discussed above. Its creation should be accompanied by an extensive consultation process to ensure it is fit-for-purpose.

*Design and Distribution Obligations (**DDO**)*

As with the issues outlined above, many token issuers are based outside Australia and are unlikely to prepare a Target Market Determination (**TMD**) to comply with Australia's *Design and Distribution Obligations*. Given this reality, ASIC should consider providing relief for the distribution of these products, provided that appropriate risk disclosures are in place to ensure consumers can make informed decisions before engaging with them.

Restricting access to these products through Australian intermediaries may push users towards offshore entities with fewer customer protections. On the other hand, a balanced

[14] International Organization of Securities Commissions, "*IOSCO Policy Recommendations for Crypto and Digital Asset Markets (including DeFi) Umbrella Note*," IOSCO (December 2023)

regulatory approach that prioritises transparency over exclusion would better serve both market participants and regulatory objectives. See our response to B2Q2 for further details.

Client monies

ASIC should provide relief from client money obligations. Under the proposed framework, exchanges will facilitate access to both financial and non-financial products. Current client money rules require platforms to segregate customer fiat used to acquire financial products. However, at the point of transaction, platforms cannot always determine whether a customer intends to purchase a financial or non-financial token.

Additionally, many exchanges include de minimis funds for operational efficiency. ASIC should consider these practical challenges when applying client money obligations. See our response to B2Q3 for further details.

Client money is typically required to be held in an account with an Australian Depository Institution. However, many digital asset intermediaries in Australia struggle to secure reliable banking services, and action on the Council of Financial Regulators' recommendations to address debanking issues remains pending.

Given these challenges, ASIC should allow flexibility in client money arrangements for digital asset intermediaries providing access to financial products. This would ensure that regulatory requirements are practical and do not inadvertently restrict market access due to ongoing banking limitations.

Insurance

AFSL holders providing financial services to retail clients must have appropriate compensation and insurance arrangements in place, including alternative compensation mechanisms if insurance is unavailable, as outlined in ASIC Regulatory Guide 126 and existing ASIC relief.

As the industry is new and there is not an accepted licensing framework, insurance premiums, where available, are prohibitive. We suggest that ASIC provide bright line guidance on what alternative arrangements will be accepted. This will ensure swift processing of licensing applications where financial product digital assets are involved, freeing up ASIC and industry resources.

Insurance providers, in turn, will need more time to learn how best to price the risks associated with digital asset products and services to create a viable insurance market. As indemnification markets evolve, we suggest ASIC recognise and permit suitable alternative indemnification arrangements – e.g. tied to current industry practices that

target specific threats like cyber and theft – to help ensure appropriate customer protection. We recommend that the Corporations Regulations be amended to recognise such market arrangements as sufficient so ASIC need not assess individual relief applications.

B2Q2 Are there any aspects of ASIC's guidance that may need to be tailored for digital assets that are financial products?

Where regulatory obligations are modified (eg, see response to B2Q1), ASIC will need to update its corresponding guidance.

In relation to INFO 225, ASIC should make changes to enable Australia-based intermediaries to support digital assets and related services classified as financial products domestically, particularly when they are not considered financial products in other jurisdictions.

Restricting or heavily disincentivising service providers from offering access to these products would likely push Australian users towards offshore providers with fewer protections and less regulatory oversight. To mitigate this risk, ASIC should grant relief in cases where it is unclear whether an asset qualifies as a financial product under Australian regulations or where standard regulatory obligations cannot be mapped to clearly identifiable parties.

As outlined in the Government's DAP proposal,consumer protection can be effectively achieved through intermediary disclosures. By requiring intermediaries to inform consumers that these assets are issued by international entities and may not meet local regulatory requirements, ASIC can ensure that users have the necessary information to make informed decisions while maintaining a balanced regulatory approach.

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.

Segregation at the blockchain

In reference to digital assets that are financial products, Coinbase supports the extension of omnibus relief for custodians and subcustodians as well as introducing relief to allow limited comingling.

The use of omnibus wallets is common practice in both digital asset and traditional finance industries and should be permitted, provided it is accompanied by a robust internal ledger that tracks client-by-client asset ownership in real-time. Digital asset custodians (as well as sub-custodian asset holders) should not be required to use entirely separate wallets for each individual customer, as doing so would be operationally prohibitive and lead to inappropriate customer outcomes regarding trading, staking, and withdrawals.

Absolute segregation of digital assets that are financial products on the blockchain may prove challenging due to shared wallet infrastructure that is deployed by some exchanges. We recommend ASIC allow for segregation to happen on an accounting ledger, as opposed to on the blockchain. We also recommend expressly permitting the option of sharing wallet infrastructure between digital assets that are financial products, and digital assets that are not financial products.

Platforms have developed shared technology stacks and wallet infrastructure to support multiple assets efficiently. This approach enhances economies of scale, reduces operational overheads, and optimises the customer experience without compromising security or asset integrity. ASIC should recognise these industry practices and allow flexibility in wallet management. Mandating a strict asset segregation policy, on the other hand, may require a platform to overhaul existing blockchain security protocols, wallet infrastructure, and technology stacks. This requirement would take an extended period to implement, require significant investment, without providing substantial benefit to customers.

ASIC should also provide relief to allow limited commingling of operational and client funds in the same wallet. Small amounts of operational funds should be allowed to be commingled with client funds as deductible fees and expenses from staking and other services, or to ensure quick asset transfers in a 'worst case scenario' security breach under business continuity plan policies. Segregation in an accounting ledger would be sufficient to record users' interests in respect of their digital assets for the purposes of applying legal protections.

Independently verification of cybersecurity and controls standards

ASIC should not require advanced independent certifications of cybersecurity controls such as SOC 1 / 2, GS 007. The digital assets industry is still evolving and the development of best-in-class foundational infrastructure is still underway, resulting in substantially different businesses and offerings.

We support the need for strong standards and we recommend ASIC undertake a phased regulatory approach, gradually introducing more advanced compliance standards over time while monitoring and consulting with the industry on the development of industry specific standards. This would allow the industry to continue to develop robust systems tailored to digital assets while ensuring that consumer protection remains a priority.

Net Tangible Asset requirement

Similarly, applying the AUD10 million Net Tangible Asset (**NTA**) requirement intended for traditional financial services custodians may not align with the operational realities, scale or systemic importance of business of many digital asset platforms. Imposing a high NTA requirement could divert critical resources away from enhancing security measures and technological infrastructure. We recommend ASIC consult on a more tailored approach that is commensurate with the nature, scale and complexity of business operated by the entity, rather than an arbitrary capital threshold.

Compensation systems

In line with our previous commentary regarding limitations on banking and insurance access in Australia (response in B2Q1), requiring retail AFSL holders to have compensation schemes and insurance plans may be impractical at this time. Again, many insurers are unwilling to underwrite policies for digital asset-related services, or they impose prohibitively high premiums that are commercially unsustainable. This issue is unlikely to be resolved without market intervention by ASIC. Further,the current process for approval for alternative insurance arrangements is time-intensive. We recommend a more balanced approach to compensation arrangements to support the industry's development while maintaining appropriate consumer protection safeguards.

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?

We welcome ASIC's consideration of Option 5 for Responsible Managers in digital asset financial services. ASIC should recognise experience in operating or developing digital asset services and platforms as relevant, even if it has not previously involved regulated financial services or financial products.

We suggest that familiarity and experience in the technological aspects of digital assets should also be relevant considerations in assessing relevant experience under Option 5. We encourage ASIC to provide principles-based, non-prescriptive, guidance on how it will assess a candidate's past digital asset business experience. This guidance should include examples.

Tailored Licence Authorisations

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'.

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?

Where digital assets service providers are providing services in relation to tokens that are financial products, or the service itself constitutes a financial product, the related authorisations are generally appropriate.

However, we suggest that ASIC clarify that for some financial products not all types of authorisations are relevant. The lack of clarity in ASIC's public statements regarding NCPFs has caused confusion across the Australian financial services industry. As in our response to A3Q2, ASIC should clarify that there is no need to create a new 'making a market' authorisation for NCPFs. ASIC should also clarify that Australian Markets and Clearing and Settlement Facility licensing is inapplicable to NCPFs.

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?

Coinbase agrees that it would be appropriate to tailor the derivatives authorisation for financial products where there is no leverage involved. In recognising this need, ASIC may have uncovered a conflict between the intent of the derivatives legislation and the interpretation that it is looking to take for the purposes of this consultation.

Conclusion

We appreciate ASICs efforts to provide clarity to the industry, though at this stage we believe that clarity is best provided by the Government. The proposed Government reforms have been through extraneous consultation and reached a point of broad agreement across all stakeholders. They will uphold consumer protection while allowing innovators in Australia to continue to bring benefits to the Australian economy.

As there are no pressing risks or consumer harms that are addressed by this update, we suggest that ASIC delays any consultation or updates on INFO 225 until Government reforms are in place, and, if required, provides broad based regulatory relief to ensure a smooth transition for the industry and its customers.