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Australian Securities and Investment Commission
Digital Assets Team
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28 February 2025

Re: Response to Consultation Paper 381, Updates to INFO 225

Dear ASIC Consultation Team,

Circle appreciates the opportunity to provide feedback on the proposed amendments to INFO 225 as outlined in Consultation Paper CP 381. While the updates offer clarity on the regulatory framework for a range of digital assets and stablecoins, we have identified certain areas where refinements or exclusions may be helpful to prevent unintended regulatory burdens. Below, we outline key concerns and recommendations.

Executive Summary: Stablecoins play a distinct role in the digital asset ecosystem, primarily serving as payment instruments rather than investment products. Classifying stablecoins as financial products under Australian law would impose unnecessary regulatory burdens, hinder innovation, and misalign with global best practices. A more appropriate framework would recognize stablecoins as digital payment instruments, aligning oversight with payments and financial stability regulations rather than securities laws.

Why Stablecoins Should Not Be Classified as Financial Products

- **Stablecoins Are Payment Tools, Not Investment Vehicles**
  - Unlike traditional financial products, stablecoins such as USDC are designed for payments, remittances, and settlements, rather than speculative investment.
  - Applying financial product regulations, such as those governing managed investment schemes (MIS) or derivatives, would be misaligned with stablecoin functionality.
- **Existing Global Precedents Do Not Treat Stablecoins as Financial Products**
  - Singapore (MAS), Japan (FSA), and the EU (MiCA framework), for example, have introduced dedicated stablecoin regulations distinct from securities laws.
  - Legislation currently pending in the US Senate (GENIUS Act) and US House of Representatives (STABLE Act) also generally define stablecoins as a digital asset used for payment or settlement, pegged to a fixed monetary value.
  - Defining stablecoins as a financial product would be a misalignment with

international approaches, consequently pushing businesses and innovation offshore while reducing market competitiveness.

- **Consumer Protections Are Better Addressed Under Payment Regulations**
    - Applying traditional financial product disclosure requirements (e.g., a PDS) would not provide meaningful protections for users of stablecoins used for transactions.
    - Requirements for global reserve backing and redemption assurances, rather than securities-style regulation, provide better risk mitigation.

Appropriate Regulatory Framework for Stablecoins

- **Stablecoin-Specific Payment Licensing**
    - Use ASIC regulatory discretion to consider establishment of a Class Order dedicated regulatory category under the Payment Services Act to ensure reserve transparency, redemption rights, and operational oversight without misclassifying stablecoins as securities or derivatives.
- **Risk-Based Approach for Different Stablecoin Models**
    - Fully 100% reserve-backed on a global basis, fiat-backed stablecoins (e.g., USDC) should be regulated under a payments framework, with appropriate and robust reserve and disclosure requirements.
    - Algorithmic stablecoins or those promising returns based on algorithms may require additional scrutiny under financial product regulation.
- **Global Harmonization & Regulatory Clarity**
    - Aligning Australia's regulatory approach with MiCA (EU), Singapore (MAS), Japan (FSA) and the emerging Hong Kong and US regimes would create a coherent, competitive environment while preventing regulatory arbitrage.

By distinguishing stablecoins from financial products, Australia can foster innovation, consumer protection, and financial stability, ensuring that its regulatory framework remains globally competitive and market-aligned.

Responses to Questions in Consultation Paper 381

Section A1 - Proposal

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

Section A1 Feedback - Responses

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.

Response: We believe the following areas require further clarification or inclusion:

- **Cross-Border Regulatory Harmonization**: There is a need for clearer alignment with international stablecoin regulations, such as the emerging U.S. frameworks, regional frameworks in Japan, Singapore, Hong Kong and BIS recommendations, to prevent regulatory arbitrage and ensure Australian businesses remain globally competitive.

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

Response: We appreciate the efforts made to enhance regulatory clarity for digital assets. However, there are certain areas that may introduce unnecessary regulatory burdens or require refinement to avoid unintended consequences:

- **Classification of Wrapped Tokens as Derivatives**: The broad suggestion that wrapped tokens may be classified as derivatives due to their price dependence on an underlying asset is overly restrictive. Wrapped tokens primarily serve as interoperability tools and do not inherently introduce financial risk or leverage, making their inclusion under derivatives regulation seem excessive.
- **Overbroad in Defining Stablecoins as Non-Cash Payment Facilities**: Applying non-cash payment licensing requirements to all stablecoins used in transactions.
- **Licensing for Non-Custodial Wallet Providers**: The draft implies that non-custodial wallets may require financial licensing, despite the fact that these wallets do not hold user funds. This deviates from international best practices and could hinder innovation in self-custody solutions.

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.

Response: No Response Provided

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

Section A2 Feedback - Responses

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.

Response: There are a few instances where further clarification or refinements may be helpful to ensure regulatory certainty.

- **Example 4 (Yield-Bearing Stablecoin as a Managed Investment Scheme)**: While yield-bearing stablecoins may exhibit characteristics of a financial product, classification under a Managed Investment Scheme (MIS) should depend on whether the issuer actively pools funds for collective investment. If yield is generated solely through an automated, transparent smart contract mechanism without intermediary management, it may not fall under MIS requirements. Greater clarity on the threshold for regulatory classification would help market participants structure products appropriately.

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.

Response: No Response Provided

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

Response:

- **Overclassification of Yield-Bearing Stablecoins (Example 4)**: Treating all yield-bearing stablecoins as Managed Investment Schemes (MIS) may capture automated DeFi protocols that do not involve active fund management. This could lead to regulatory uncertainty and discourage innovation in self-executing, smart contract-based financial products. A more nuanced classification should also distinguish between actively managed products and algorithmic yield mechanisms.

Section A3 - Proposal
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.

Section A3 Feedback - Responses

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?

Response:

- **Stablecoins**: An example should differentiate between payment stablecoins (e.g., USDC, which maintains a 1:1 fiat reserve) and algorithmic stablecoins that rely on market mechanisms to maintain their peg. The classification of stablecoins as financial products should depend on factors such as redemption guarantees, backing mechanisms, and algorithmic-based features.
- **Yield Bearing Stablecoins**: Provide a clear differentiation on level of risk and regulatory regime associated with a yield-bearing stablecoin where yield is generated solely through an automated, transparent smart contract mechanism without intermediary management.

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.

Response: We do not concur with the underlying premise for the classification of stablecoins as financial products under the updated INFO 225. Such a classification has significant practical implications for regulated entities such as Circle, which already operates under robust compliance frameworks and adheres to stringent regulatory requirements in multiple jurisdictions.

1. Licensing and Compliance Implications

- Circle is already licensed and regulated as a Money Services Business (MSB) in the United States, and its USDC stablecoin is fully reserved, publicly audited, and compliant with global financial standards.
- In addition, Circle obtained an Electronic Money Institution (EMI) license ('agrément en qualité d'établissement de monnaie électronique) from the Autorité de Contrôle Prudentiel et de Résolution (ACPR), the French banking authority, that will allow us to issue e-money tokens (EMTs) in a MiCA compliant way out of this entity.
- And in the Asia Pacific, in June 2023 Circle obtained a Major Payment Institution (MPI) license from the Monetary Authority of Singapore (MAS). The license allows Circle Singapore to offer digital payment token services, alongside cross-border money transfer

services and domestic money transfer services in Singapore via its various products and services,

- A requirement to obtain an Australian Financial Services (AFS) licence would impose duplicative regulatory requirements, increasing operational costs without necessarily enhancing consumer protections, as Circle already meets global financial transparency and risk mitigation standards.

2. Impact on Liquidity and Market Access

- Requiring stablecoins to be licensed financial products could limit their availability for payment, settlement, and remittance use cases by introducing restrictions on how they are issued and distributed.

3. Reserve and Custody Requirements

- Circle's USDC reserves already consist of highly liquid, short-term U.S. government securities and cash, meeting stringent regulatory and transparency standards.
- If Australia mandates additional custodial or reserve-holding requirements, it could limit where reserves can be held, creating operational inefficiencies without improving consumer protections.

4. Innovation and Regulatory Harmonization

- Regulatory misalignment between Australia, the U.S., the EU (MiCA framework) and APAC regional regulatory regimes in Singapore, Japan and proposed law in Hong Kong could introduce uncertainty for businesses like Circle, affecting its ability to efficiently provide digital asset services in Australia.
- A balanced regulatory approach should recognize pre-existing compliance standards, ensure equitable treatment of globally regulated entities, and avoid redundant licensing requirements.

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.

Response: We do not support the underlying premise that stablecoins, particularly a licensed, regulated and 100% fiat asset backed stablecoin like USDC, should be deemed and regulated as a financial product, making the question of a transition period superfluous.

Section B1 - Proposal

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. (A broad range of scope and conditions are applicable.)

Section B1 Feedback - Responses

B1Q1

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

Response: ASIC should progress with a class no-action position, but the proposed framework should not require businesses to apply for an AFS licence or CS facility licence within a prescribed timeframe. The no-action relief should be available indefinitely to entities that operate within legal and compliance parameters but do not, and in the case of 100% asset backed stablecoin issuers should be deemed as not required to, seek AFS or CS licensing.

- Alternative Approach – Voluntary Compliance Measures Without Licensing Mandates: Instead of requiring licensing as a condition of the no-action relief, ASIC could introduce alternative compliance obligations such as periodic reporting, voluntary regulatory engagement, or adherence to 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?

Response: The proposed conditions for the class no-action position should be revised to provide greater flexibility for businesses that do not intend, or or in the case of 100% asset backed stablecoins should not be required, to apply for an AFS licence or CS facility licence in the foreseeable future. The current framework implicitly assumes that all entities will eventually seek licensing, which may not align with the business models or regulatory needs of certain market participants. A more balanced approach should prioritize investor protection without forcing businesses into an unnecessary licensing pathway.

- **Decoupling No-Action Relief from Licensing Obligations**: The no-action position should not be contingent on an AFS or CS facility licence application. Instead, ASIC should allow businesses to operate lawfully under the no-action relief indefinitely, provided they meet transparency, risk management, and reporting obligations.
- **Investor Protection Through Voluntary Compliance Mechanisms**: To ensure market integrity, businesses relying on the no-action relief could be required to adhere to

minimum disclosure standards, maintain appropriate governance structures, and conduct periodic risk assessments without requiring full licensing.

- **A More Flexible and Risk-Based Approach:** Would ensure strong investor protection while allowing businesses to operate responsibly without unnecessary regulatory burdens.

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.

Response: The class no-action position should not be dependent on lodging an AFS licence application or submitting a written intention to apply for a market and/or Clearing and Settlement (CS) facility licence. Such a requirement would impose unnecessary regulatory burdens on entities that may not need licensing under the current framework. A more flexible approach is necessary to accommodate diverse business models, evolving regulatory landscapes, and ongoing market developments.

- **Preserving Optionality for Businesses**: Many digital asset businesses operate without directly providing financial services that would necessitate an AFS or CS facility licence. A requirement to lodge an application prematurely forces businesses into an unnecessary regulatory pathway.
- **Encouraging Innovation Without Unwarranted Compliance Costs**: Tying the no-action relief to licensing applications could deter market participation and stifle innovation by requiring early and potentially unnecessary licensing commitments.
- **Regulatory Engagement Without Licensing:** ASIC could instead require periodic regulatory engagement or compliance attestations from businesses relying on the no-action relief, ensuring accountability without mandating unnecessary licensing steps.

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.

Response: A strict deadline for applying for an AFS licence or commencing pre-lodgement discussions for a market or Clearing and Settlement (CS) facility licence would be overly restrictive and fail to accommodate the diverse operational needs of digital asset businesses.

- **Allowing Businesses to Determine Licensing Readiness**: Many digital asset businesses may not yet, or ever be, at the stage where immediate licensing is necessary or appropriate. ASIC should permit businesses to engage voluntarily with regulators while

allowing room for future applications as their operations evolve and the need for AFS or CS licensing arises.

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?

Response: The no-action position should extend to relief from Product Disclosure Statement (PDS) obligations for product issuers, as requiring a PDS under the current framework may be inappropriate and unnecessary for certain digital asset products, particularly stablecoins that function primarily as payment instruments rather than investment products. Imposing PDS requirements unnecessarily could create regulatory inconsistencies, increase compliance costs, and limit market participation without delivering proportionate benefits to investors.

- **Stablecoins Are Not Traditional Investment Products**: A PDS is designed for financial products that involve investment risks, but stablecoins—when used for payments, remittances, or interoperability—do not fit this model. Requiring a PDS would mischaracterize these assets and introduce unwarranted regulatory burdens.
- **Alternative Consumer Protections Are More Suitable**: Instead of requiring a PDS, issuers relying on no-action relief could be required to adhere to risk disclosure best practices, such as providing transparent information on reserve backing, redemption mechanisms, and smart contract risks. This would ensure consumer protection without the complexity of a PDS framework.

Section B2 - Proposal
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.

Section B2 Feedback - Responses

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.

Response: Applying the same regulatory obligations to digital assets and traditional financial products of the same category may be appropriate in some cases but should not be automatically assumed without considering the unique characteristics of digital assets. A one-size-fits-all approach could impose undue regulatory burdens on digital asset markets, stifle innovation, and create compliance challenges that do not necessarily enhance investor

protection. A tailored, risk-based framework is necessary to ensure regulatory consistency without unnecessary restrictions.

- **Stablecoins vs. Bank Deposits**: A stablecoin fully backed by fiat reserves functions differently from securitized cash-equivalent products. Requiring capital adequacy and liquidity requirements designed for banks would be misaligned with the operational structure of stablecoins used primarily for payments and settlements.
- **A risk-proportionate regulatory framework:** Should be adopted, ensuring sufficient oversight while preserving the efficiencies and technological advancements that digital assets offer.

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

Response: ASIC's guidance should be tailored to reflect the unique characteristics of digital assets rather than applying traditional financial regulations without modification. Digital assets differ fundamentally from traditional financial products in terms of market structure, custody, execution mechanisms, and technological innovations, requiring a proportionate and risk-based 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.

Response: No Response Provided

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?

Response: ASIC should ensure that Option 5 of Regulatory Guide 105 (RG 105) is appropriately adapted for digital asset businesses to reflect the unique technological, operational, and security considerations associated with blockchain-based financial services. Traditional financial competencies may not fully capture the specialized expertise required to manage digital assets securely and in compliance with evolving regulatory standards.

- **Compliance with Emerging Global Standards**: ASIC should recognize equivalent qualifications from jurisdictions with established digital asset regulatory frameworks (e.g., MiCA in the EU, U.S. SEC/FinCEN compliance standards) to avoid regulatory fragmentation and ensure consistency with international best practices.

Section B3 - Proposal
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'.

Section B3 Feedback - Responses

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?

Response: Existing AFS licence categories impose compliance obligations designed for traditional financial intermediaries, which may not be practical or necessary for digital asset firms. A risk-based approach should ensure that low-risk service providers, such as stablecoins fully backed by fiat reserves, are not subject to AFS licensing or other regulatory burdens that are disproportionate to the low levels of risk posed..

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?

Response: No Response Provided