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Fintech Team
Australian Securities and Investments Commission
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Hamilton Locke Submission: ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX

Dear ASIC

We welcome the opportunity to provide feedback in relation to the *ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX* (**Relief Instrument**).

We acknowledge the thinking that has informed the Relief Instrument, particularly in light of *Consultation Paper 381 Updates to INFO 225: Digital assets: Financial products and services* (**CP 381**). We understand the objective of the Relief Instrument is to provide class relief for any intermediary engaging in secondary distribution of eligible stablecoins and eligible wrapped tokens if certain conditions are met.

We commend ASIC on providing industry with a practical solution while the industry is undergoing significant regulatory reform.

In doing so, we acknowledge that ASIC has considered and taken on board feedback from industry (including us) in its engagement with industry in connection with the finalisation of CP 381 and more broadly in its consideration and approval of licence applications for stablecoin issuers.

We have deep expertise in financial services, specifically the regulation of digital assets and services. We regularly advise clients on the regulatory perimeter for digital assets and services, as well as payments, and have engaged with ASIC and Treasury in roundtables and consultations on this topic. In the past few years, we have made submissions to:

- The Crypto asset secondary service providers: Licensing and custody requirements Consultation Paper in March 2022;
- Treasury's token mapping consultation paper in February 2023;
- The Senate Economics Committee inquiry into the draft Digital Assets (Market Regulation) Bill 2023 in May 2023;
- Treasury's Regulating digital asset platforms Consultation Paper in October 2023;
- ASIC's consultation on proposed updates to INFO Sheet 225 Digital Assets in February 2025.
- Treasury's exposure draft legislation on regulating digital asset platforms in October 2025; and
- Treasury's exposure draft on the payment system modernisation in November 2025.

We are delighted with the opportunity to continue to provide feedback on the Relief Instrument.

We thank you in advance for considering the points we have raised in this submission and welcome any feedback you may have in respect of this submission. As always, we are happy to further engage with ASIC on this in any forum and we look forward to the outcome of this consultation process.

Yours faithfully

Partner
Hamilton Locke

Strategic Counsel
Hamilton Locke

Submission Paper

In response to the release of ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX

About Hamilton Locke – Funds and Financial Services

Hamilton Locke is Australia's fastest growing law firm, which is focused on transforming the traditional approach to corporate and commercial legal services. Hamilton Locke is a full service corporate law firm, which is a part of the HPX Group, that delivers essential corporate services across legal, governance, risk and compliance helping businesses grow and thrive.

The Funds and Financial Services Team at Hamilton Locke (formerly, The Fold Legal) has become one of the go-to firms for digital asset, blockchain, fintech and insurtech businesses seeking legal and regulatory advice. Our Funds and Financial Services team is also one of Australia's largest as a result of the merger between The Fold Legal and Hamilton Locke.

We are known for our technical expertise and industry knowledge, which we use to provide practical solutions for our fintech and digital asset clients. Our expertise in financial and credit services is recognised by our ranking in Chambers and Partners Asia-Pacific and FinTech Legal Guides. Reflecting our commitment to client service, we also won Best Law & Related Services Firm (<$30mil) across several specialist categories based on direct feedback from our clients.

Collectively, we have been deeply steeped in the fintech space since early 2013 and we continue to deepen and strengthen this experience as one of Australia's largest and most diverse financial services practices.

We are technical specialists that have a broad and deep understanding of blockchain technology, digital assets, exchanges, Decentralised Autonomous Organisations (**DAO**), alternate platforms and digital asset products and service offerings, as well as stablecoins and payments. Our knowledge of digital assets and services, combined with our traditional financial services expertise is market leading. We use our industry knowledge and expertise to deliver practical, compliant and innovative solutions for our clients. We have worked with digital asset exchanges, miners, digital asset payment businesses, digital asset platforms, DAOs and token issuers to design innovative and compliant offerings.

We are a partner and member of the Digital Economy Council of Australia (**DECA**) and InsurTech Australia.

This submission has been prepared by [redacted]

Our Submission

As mentioned in our covering letter, we welcome the introduction of the Relief Instrument. At a high level, the Relief Instrument includes most of the required drafting to operate as intended. However, there are a number of flow-on issues that need to be addressed, which arise due to the convergence of the following:

- ASIC's *INFO Sheet 225 Digital Assets: Financial products and services* (**INFO Sheet 225**) and the position on stablecoins and wrapped tokens;
- ASIC's class no action letter for digital assets business published on 29 October 2025 (**No Action Letter**);
- Payment reforms as released in Tranche 1a of the *Treasury Laws Amendment Bill 2025 – Payments System Modernisation – amendment of the Corporations Act 2001* (**Payment Reforms**); and
- the *Treasury Laws Amendment (Digital Asset and Tokenised Custody Platforms) Bill 2025* (**DAP Reforms**).

These flow-on issues (if not addressed) may undermine the proposed benefits of the Relief Instrument and inadvertently front run the proposed Payment Reforms and DAP Reforms (which we understand is not the intent).

To help you understand these issues, we have detailed below what these issues are, what causes them and proposed recommendations for redressing them. It is critical that the Relief Instrument aligns with the broader reform package so that it does not require businesses to apply for licences that are both difficult to obtain and will be obsolete in the future. Otherwise, industry and ASIC alike will be under immense time and resource pressure to apply for licences that will ultimately become redundant under the proposed Payment Reforms and DAP Reforms.

A sensible approach would be to seek to ensure that the Relief Instrument is consistent with the proposed Payment Reforms and DAP Reforms to be introduced by Treasury, so as to provide a more seamless transition between the current and future states. We understand that this is certainly ASIC's intent, and we appreciate ASIC's openness to consider the matters raised in this submission.

Please note that these issues have not been listed in any order of priority or prominence. Unless specified otherwise, all references in this submission to sections are to sections of the *Corporations Act 2001* (Cth).

Purpose of the Relief Instrument

We understand the Relief Instrument has been introduced to provide relief to intermediaries (who are not themselves issuers) of "eligible stablecoins" and "eligible wrapped tokens" from holding an Australian financial services licence (**AFSL**), a markets licence and / or a clearing and settlement facility licence (as applicable), subject to satisfying all the requirements of the Relief Instrument.

Access to the Relief Instrument is predicated on certain definitions in the Relief Instrument being satisfied, including:

- being an "eligible stablecoin" or an "eligible wrapped token"; and
- being an "eligible stablecoin issuer" or an "eligible wrapped token issuer".

Both definitions include a requirement for the relevant issuer to hold an AFSL, which, as we outline below in detail, is problematic for several reasons.

We welcome this relief for intermediaries, however, we consider that the Relief Instrument and the requirements it is subject to are not consistent with ASIC's intent, given it is also not consistent with other aspects of the reforms being introduced by Treasury under the DAP Reforms and Payment Reforms as well as the preconditions set out in ASIC's No Action Letter. We provide further details on this below.

ASIC's view on stablecoins and wrapped tokens in INFO Sheet 225

The release of INFO Sheet 225 has clarified ASIC's position on digital assets such as stablecoins and wrapped tokens. According to ASIC's view of the current law, stablecoins (which are non-yielding) are highly likely to be non-cash payment facilities (**NCPF**) and wrapped tokens are highly likely to be derivatives.

This means any digital asset businesses issuing or providing access to these tokens are at the very least expected to hold an AFS licence (unless an exemption applies).

While we disagreed with ASIC's position on the characterisation of stablecoins and wrapped tokens in our submission on Consultation Paper 381 earlier this year[1], we welcome the updates by ASIC in seeking to provide regulatory certainty to digital asset businesses on the existing regulatory regime while we await the Payment Reforms and DAP Reforms.

Based on ASIC's guidance in INFO Sheet 225, we understand that digital asset exchanges (who provide multiple financial services in respect of stablecoins and wrapped tokens) would likely be providing the following financial services at present, including:

- dealing in a non-cash payment facility;
- making a market in a non-cash payment facility (particularly for over-the-counter trades);
- operating a market (for example, order books which match trades);
- issuing a derivative; and / or
- providing a custodial or depository service (by holding both types of token, which are financial products).

Without the No Action Letter or Relief Instrument digital asset exchanges and other intermediaries are very likely to be in breach of the existing law and have always required an AFSL and / or a markets licence or clearing and settlement licence. This is problematic, as there are some gaps with the No Action Letter and Relief Instrument as outlined below.

Issue 1: Interaction between No Action Letter and Relief Instrument

ASIC has published its No Action Letter with the aim of assisting digital asset business to seamlessly transition to licensing without fear of enforcement action.

Positively, the No Action Letter provides comfort to digital asset businesses that ASIC will not take enforcement action against them for being in breach of the law (as articulated in INFO Sheet 225). However, the conditions of the No Action Letter create additional hurdles for digital asset exchanges and other intermediaries that do not align with the objective of the Relief Instrument.

We understand that ASIC's no action position is subject to the following conditions:

- the person has lodged an application for (as relevant):
    - an AFSL (including any variation application) ***on or before*** 30 June 2026;
    - a markets licence, in which case a person must have notified ASIC in writing ***by 30 June 2026*** of their intention to apply for a markets licence, attend a licensing pre-meeting with ASIC in relation to the proposed application, and lodge a market licence application within 12 months of the date ASIC was notified of the intention to apply; and / or
    - a clearing and settlement facility licence, in which case a person must have notified ASIC in writing ***by 30 June 2026*** of their intention to apply for a clearing and settlement facility licence, attend a licensing pre-meeting with ASIC in relation to the proposed application,

[1] Our views on why we disagreed with ASIC's position were set out in our earlier submission this year on *Consultation Paper 381: Updates to INFO 225: Digital Assets: Financial Products and Services*.

and lodge a market licence application within 12 months of the date ASIC was notified of the intention to apply; and

- the financial services are provided ***after*** the date of the No Action Letter (being 29 October 2025) and ***on or before***;
    - if ASIC notifies the person in writing that ASIC refuses to receive the application under subsection 1274(8) of the Act—the day on which ASIC gives that notification;
    - if the person withdraws the application—the day the application is withdrawn;
    - if ASIC refuses to grant the person the licence or the variation (as applicable)—the day on which ASIC gives the person notice in writing of the refusal; or
    - if ASIC grants the person the licence or the variation (as applicable)—the day on which the AFSL is granted or varied.
- the person must have first provided the relevant financial services, operated the financial market or have operated the clearing and settlement facility in Australia ***on or before 31 December 2025***;
- if the financial services are provided to retail clients, the person must become a member of AFCA prior to applying for the licence and must remain a member of AFCA for at least 1 year after ceasing to rely on the no action position; and
- for a foreign company, the person must have registered as a foreign company and appointed a local agent.

It is only if the requirements above are met that ASIC will not take action against a person for:

- not holding an AFSL for the the provision of financial services in relation to digital assets that are financial products;
- not holding an Australian market licence for operating a financial market only because one or more digital assets is a financial product; or
- not holding an Australian clearing and settlement facility licence for operating a clearing and settlement facility only because one or more digital assets is a financial product.

In our view, the requirement to obtain an AFSL or any other licence is at odds with the objective and operation of the Relief Instrument afforded to intermediaries in relation to wrapped tokens and stablecoins (though to a lesser extent in respect of the latter) in light of the DAP Reforms and Payment Reforms.

This is because in Treasury's proposed Payment Reforms and DAP Reforms, the treatment of both of these things will be significantly different:

- the concept of a NCPF will be removed and stablecoins will now fall under a new financial product called a tokenised stored value facility. Under this product definition, the facility within which stablecoins can be redeemed will be regulated as the tokenised stored value facility, but the stablecoin (i.e. the token) itself will not be a financial product; and
- wrapped tokens will not be a derivative and will be exempt from financial services laws (or regulated as a completely different product) if certain conditions are met. See Issue 2 below for more detail.

The risk with this approach is that issuers of wrapped tokens and to a lesser degree, [2] stablecoins may be disinclined to apply for an AFSL. This is highly problematic as the Relief Instrument is predicated on issuers holding an AFSL.[3] This means an intermediary will not be able to access the benefit of the Relief Instrument unless the issuer applies for and obtains a licence that will no longer be required.

[2] This is on the basis that it is proposed that there will be a streamlined process for transitioning NCPF authorisations to the proposed new payment product and service authorisations is implemented. If this is not the case, then similar issues arise for stablecoins as those outlined for wrapped tokens.
[3] Definition of "eligible stablecoin" and "eligible wrapped token", section 5 of the *ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX*.

Intermediaries that cannot rely on the Relief Instrument (either because the issuer will not apply for a licence or has not yet done so), will need to rely on the No Action Letter in the interim – but cannot do so unless they themselves apply for one or more licences that they will not need under the proposed Payment Reforms or DAP Reforms (nor will those licences be needed if the intermediary eventually has access to the Relief Instrument).

The net effect is that an intermediary would need to apply for complex licences, but in several years the required licence authorisations will not be required or will be fundamentally different. This puts exchanges and other intermediaries in a difficult situation of needing to apply for licences that will, in some cases, take one to two years to obtain, only to no longer need the licence soon after, or to need to apply for a variation to replace authorisations with other authorisations. Compounding this is the significant cost and effort required to obtain that licence.

Issue 2: Intersection with DAP Reforms by Treasury

A separate issue we have identified with the Relief Instrument is its interaction with the DAP Reforms. Under INFO Sheet 225, wrapped tokens are considered to be a derivative, requiring an AFSL. However, under the DAP Reforms, section 765E specifically requires the redemption right (which is characteristic of a wrapped token) to be ignored for the purposes of working out whether the wrapped token or the rights or interests attached to it are a financial product.[4]

While there is no explicit reference to a "wrapped token" in the DAP Reforms, it is clear from the Explanatory Materials to the DAP Reforms that section 765E is aimed at addressing and clarifying the position on wrapped tokens and whether they are a financial product.

We understand that wrapped tokens, generally, will not be financial product under the DAP Reforms, and wrapping generally will not trigger the financial services licensing regime, unless the underlying token is itself a financial product.[5] That is, the wrapping does not convert the underlying asset into a financial product merely by virtue of wrapping the asset – we have agreed with Treasury's views around this in our submission on the DAP Reforms.[6] However, the Relief Instrument is not consistent with these proposed DAP Reforms. Namely, the Relief Instrument contemplates in its definition that an "eligible wrapped token" is a derivative, and that the issuer of the eligible wrapped token is required to hold an AFSL that authorises them to issue such derivatives.

We note that a facility that issues wrapped tokens is likely to be a tokenised custody platform under the DAP Reforms, but this is a fundamentally different authorisation that will be required for wrapped token issuers than would be the case under INFO Sheet 225 – which will instead require a derivatives licence, which is particularly difficult and expensive to obtain (especially for retail clients[7]) and which calls for completely different responsible managers than would be the case for a tokenised custody platform.

This means wrapped token issuers need to apply for an AFSL now, but under the DAP Reforms, may not in fact need an AFSL (if they do not meet the definition of a tokenised custody platform) or will require an AFSL which bears no resemblance to an AFSL for derivatives. This means there is a risk that wrapped token issuers will not, in fact, apply for an AFSL now at all.

This creates a problematic outcome for both issuers of wrapped tokens and digital asset exchanges that seek to list wrapped tokens on their exchange. That is:

- for issuers – they will be applying for an AFSL that they will not need once the DAP Reforms come into effect; and
- for distributors that seek to rely on the Relief Instrument– they will not have access to the relief unless the wrapped token issuer applies for an AFSL.

[4] Section 765E, *Exposure Draft, Treasury Laws Amendment Bill 2025: Digital Asset and tokenised custody, platforms.*
[5] Paragraph 1.160 of the Exposure Draft Explanatory Materials to the *Treasury Laws Amendment (Regulating Digital Asset and Tokenised Custody Platforms) Bill 2025*.
[6] Hamilton Locke Submission: Regulating digital asset platforms – exposure draft legislation, 23 October 2025.
[7] It also raises issues in relation to the application of, and compliance with, the OTC derivative transaction reporting requirements, which have also not been addressed by the Relief Instrument.

Businesses that cannot rely on the Relief Instrument for the above reasons will therefore need to rely on the No Action Letter. However, as mentioned above, this cannot be done until digital asset exchanges apply for a licence in accordance with the conditions of the No Action Letter.

We do not see this same issue for stablecoins, as we understand that under the Payment Reforms stablecoin issuers will need to hold an AFSL (albeit different authorisations) as such services will be a tokenised stored value facility.[8] This is on the basis that we expect stablecoin issuers can apply for an AFSL with the NCPF authorisation and then transition to the relevant new authorisations alongside other existing licensed payments providers.

Issue 3: Lack of retroactivity

Additionally, we are concerned that the no action position only applies to financial services provided after 29 October 2025. This means that businesses will be exposed for any financial services provided in relation to stablecoins and wrapped tokens (as well as other products and services) prior to 29 October 2025. This lack of retroactivity engenders uncertainty, the very thing industry wants to avoid, and which ASIC is seeking to redress with the No Action Letter and Relief Instrument. It is particularly critical, given that businesses remain exposed for a period during which there was no clear guidance from ASIC (and in some cases, contradictory guidance in the previous version of INFO Sheet 225) to the effect that a range of businesses were, in fact, presently providing financial services.

This may be an oversight, or the result of a mismatch between the No Action Letter and Relief Instrument. Either way, this is a critical issue that we strongly recommend that ASIC considers and action, to better facilitate a seamless transitioning to licensing without fear of enforcement. Of course, ASIC should reserve its rights to investigate and carry out any enforcement action for any egregious acts or omissions.

Recommendations

Based on the issues discussed above, we do not think the Relief Instrument nor ASIC's no action position in its No Action Letter should be predicated on the requirement for persons to hold a licence that they will not require under either the Relief Instrument, the DAP Reforms and / or Payment Reforms (as relevant) as this creates a transient need for licensing.

This is especially because:

- the licence may not even be granted before the DAP Reforms and / or Payment Reforms (as relevant) come into effect; and
- digital asset exchanges and wrapped token issuers may be applying for a licence they will not even need in the future and therefore, significant time and resources of industry and ASIC will be wasted on redundant licence applications.

Based on our views set out above, we recommend that ASIC:

- amend the Relief Instrument to remove any requirement for a wrapped token issuer to obtain an AFSL in respect of derivatives, given such an issuer is more likely to need a tokenised custody platform licence in the future;
- ASIC issue a separate stablecoin and wrapped token no action letter that clarifies that a business does not need to apply for a licence in order to have the benefit of ASIC's no action position provided it instead intends to rely on the Relief Instrument (subject to the relevant product issuer applying for an AFSL, which is outside the control of the intermediary); and
- Clarify and update the No Action Letter to include past activities that were operated in good faith and which did not seek to purposefully avoid the operation of the law.

[8] We note that while the basis on which a payment stablecoin will require an AFS licence differs between ASIC's view in INFO Sheet 225 and Treasury's current drafting in the Payment Reforms, the outcome is essentially the same – leading to stablecoin issuers requiring an AFS licence.

We consider that our recommendations would provide greater clarity and better transition industry to licensing and prepare for the proposed DAP Reforms and Payment Reforms, without expending time and resources on licences that will not be required once the DAP Reforms and Payment Reforms are enacted.