

AUSTRALIAN BITCOIN INDUSTRY BODY

1

The Australian Bitcoin Industry Body (“ABIB”) welcomes the invitation to provide comment on ASIC’s *CONSULTATION PAPER 381: Updates to INFO 225: Digital assets: Financial products and services* (the “Proposal” or “Consultation”).

ABIB is a member based not-for-profit organisation that represents the Bitcoin industry and proponents in Australia. Its members included Bitcoin-only exchanges and wallets, and its sponsors include developers, exchanges, podcasters, educators and miners. ABIB aims to progress several objectives:

- To provide a source of accurate information regarding Bitcoin for Australian regulators and media, filling the absence that has resulted from Bitcoin being a decentralised protocol.
- To encourage the adoption of Bitcoin within Australia, to ensure that Australia and Australians benefit from this revolutionary technology.
- To educate the community on the latest developments in Bitcoin.
- To present a unified voice representing the Australian Bitcoin Industry.

ABIB supports, with some noted reservations, the stated objectives of the proposed framework being:

- 1) protecting consumers;
- 2) promoting innovation through regulatory clarity;
- 3) aligning Australia’s digital asset regulatory framework with international jurisdiction; and
- 4) utilising regulatory tools that provide agility, flexibility, and adaptability.

As will become clear, our firm view is that there should be a considered and deliberate approach to treat Bitcoin distinctly from other digital assets referenced in CP381, as *not* drawing such a distinction may have unintended consequences which may run counter to the stated objectives.

Preliminary comment on the Proposal: Bitcoin is a unique digital commodity that must be regulated separately and distinctly from other digital securities referenced in CP381.

Much of the consultation paper proposals seem to be appropriate with respect to enterprises or platforms that provide *non-Bitcoin* cryptocurrencies, such as stablecoins or any other digital asset tokens which are akin to unregistered securities.

AUSTRALIAN BITCOIN INDUSTRY BODY

2

Australia runs a considerable risk of stifling Bitcoin-only innovation (such as Point of Sale (POS), unified payment rail facilities such as peer-to-peer payments, bank-to-bank transfers, and remittance services) and potentially would face a flight of capital or small businesses overseas if it has onerous unnecessary obligations imposed upon it.

Why is Bitcoin different?

Bitcoin is the only decentralised and finitely scarce digital commodity, ensuring that owners cannot have their share of Bitcoin debased by a centralised management team. Other token networks also do not have the security of Bitcoin and are regularly subject to chain roll-backs, debasement of token holders value, operational failures (see Solana network issues) and hacks.

As Bitcoin has no issuer, it is not possible for it to be sold as part of an investment scheme to non-users. Users of Bitcoin have no dependence on the efforts of others to receive a benefit. There are no ownership bodies, no voting rights, and as such, no profits of a body to which holders could have some right.

ABIB submits that the treatment of Bitcoin and Bitcoin-only companies or service providers must be dealt with differently to other digital asset tokens (i.e. securities) or service providers. For example, Gary Gensler the former Chairman of the U.S. Securities and Exchange Commission (SEC) has noted that *“Bitcoin is not a security, but a commodity under the Commodity Futures Trading Commission (CFTC) purview.*

Senator Cynthia Lummis (R- Wyoming), now chair of the Digital Assets Subcommittee of the Senate Banking Committee has said *“Bitcoin is clearly a commodity. It is digital gold.”*

Like real estate or gold bullion, professionals engaged in Bitcoin-only services should not be required to obtain an AFSL. ABIB is concerned that using the *Corporations Act* and ancillary schemes to regulate Bitcoin would be an unnecessary siloing of Bitcoin within this regulatory framework and may limit its wide adoption and application to other businesses throughout Australia. Bitcoin is not a financial product and should not be regulated as such.

Bitcoin, as a digital property (*Blockchain Tech Pty Ltd VSC 690*) and commodity, must be available for use across various industries. Australia already has a strong emerging Bitcoin specific industry (with ABIB members being an example of this) and these activities must not be captured by a requirement for an AFSL. Bitcoin mining, as an industrial use case, is already being deployed in Australia and internationally to expand adoption of renewable energy sources in Africa (see Gridless) and Canada (see Iris Energy).

AUSTRALIAN BITCOIN INDUSTRY BODY

3

ABIB submits that Australia must support Bitcoin-only enterprise. This support may practically take the effect of facilitating a 'light touch' approach to any regulation which may affect Bitcoin enterprise. Australia must encourage bitcoin holders and Bitcoin enterprises to remain within the jurisdiction. This will increase Australia's competitiveness globally and may enhance the investment opportunities made available to Australia's population.

ABIB broadly supports the goal of regulatory clarity within the 'crypto ecosystem' as outlined in the consultation paper. However, our position is that Bitcoin must remain outside the scope of these proposed securities regulations, and to the extent that it is mentioned in any future legislation, must be appropriately (in the form of explicit exemptions e.g. noting Bitcoin is not a financial product) distinguished and carve-outs provided for enterprises and practitioners dealing with Bitcoin-only in this space.

Appendix 1: ABIB's specific responses to INFO 225 list of proposals and questions

Proposal	Your feedback	ABIB Response
A1 We propose to update INFO 225, subject to feedback from this consultation. See draft updated INFO 225 in the attachment to this consultation paper.	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.	N/a - Note that INFO 225 has been drafted by ASIC (i.e. Australian Securities & Investments Commission), and that Bitcoin (i.e. the commodity) is not regulated as a 'security'. Instead, in Australia, Bitcoin has been recognised as a form of 'digital property' by an Australian Supreme Court. As ABIB acts as the industry body for Bitcoin specific service providers, INFO 225 is largely not applicable to our members. Furthermore, ABIB's members do not currently provide customers with financial products as defined within the Corporations Act 2001.
	A1Q2 Are there any topics or guidance that were included that you think should not have been included? Please provide details.	
	A1Q3 Do you agree that the good practice guidance in INFO 225 directed to responsible entities is applicable to providers of custodial and depository services that provide custody of digital assets that are financial products? Are there any good practices that you would like added (e.g. on staking services)? Please provide details.	
A2 We propose to include the worked examples as set out in draft updated INFO 225.	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.	N/a - None of the worked examples relate to Bitcoin specifically, the provision of Bitcoin related services, or the services provided by ABIB's members to its customers.
	A2Q2 Are there any additional examples you would like to see included? Please give details of the suggested example(s), and why you consider the digital asset discussed may/may not be a financial product.	
	A2Q3 For any of these examples, are there any unintended consequences? If so, what are these and what do you propose in response?	
A3 We are considering whether to develop additional examples for	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?	N/a - ABIB's members do not currently, and do not intend at this time, to provide services relating to wrapped tokens and/or stablecoins.

INFO 225 on wrapped tokens and 'stablecoins' that may be financial products. We are seeking feedback on the practical implications for businesses.	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.	
	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.	
B1 We are considering a class no-action position for digital asset businesses that are in the process of applying for or applying to vary an AFS licence, Australian market licence or clearing and settlement (CS) facility licence.	B1Q1 Do you agree that ASIC should progress with a class no-action position as proposed here? If not, please give reasons.	<p>N/a - ABIB's members do not typically provide financial services in relation to a financial product as defined in Chapter 7, Corporations Act 2001, and hence do not require an AFSL to operate under their current business models.</p> <p>ABIB would support that a 'class no-action' position for digital asset businesses in the process of applying for an AFSL is a gesture of goodwill from the regulators, as opposed to the 'regulation by enforcement' approach typically applied to digital asset businesses in the absence of clear legislation.</p>
	B1Q2 Are the proposed conditions appropriate? Are there any additions or changes to the proposed conditions that will be more effective for investor protection?	
	B1Q3 Do you agree that the class no-action position should be dependent on a person lodging an AFS licence application or written intention to apply for a market and/or CS facility licence? If not, please explain and suggest an alternative.	
	B1Q4 Should there be a deadline for applying for an AFS licence or commencing pre-lodgement discussions in relation to a market and/or a CS facility licence? Please provide reasons.	
	B1Q5 For product issuers, should the no-action position extend to other obligations—for example, to prepare a Product Disclosure Statement (PDS)? Why or why not?	
B2 The existing AFS licence processes, regulatory guides and conditions will apply to	B2Q1 Do you agree that the same regulatory obligations should apply to digital asset and traditional financial products of the same category (e.g. securities, derivatives)? Please explain your response and provide specific examples.	N/a - ABIB's members do not typically provide financial services in relation to a financial product as defined in Chapter 7, Corporations Act 2001. ABIB is not in a

<p>persons providing financial services in relation to digital assets, including those that are based on the type of financial product involved.</p>	<p>B2Q2 Are there any aspects of ASIC's guidance that may need to be tailored for digital assets that are financial products?</p> <p>B2Q3 Do you agree that the approach proposed for custodial and depository services is appropriate for holding custody of digital assets? Do you agree that extending the omnibus client accounts is appropriate for digital assets that are financial products? Please explain, providing examples, if relevant.</p> <p>B2Q4 In relation to organisational competence, what are your views on what ASIC could consider in applying Option 5 in Regulatory Guide 105 AFS licensing: Organisational competence (RG 105) for entities providing financial services in relation to digital assets that are financial products</p>	<p>position to comment on the following:</p> <ul style="list-style-type: none"> • whether equivalent regulatory obligations should be applied to digital asset and traditional financial products; • ASIC Corporations (Custody Standards for Providers of Custodial and Depository Services) Instrument 2024/17 requirements specific to the custody of digital assets, given that this applies to AFS Licensees; and • RG 105 AFS licensing, Option 5, as ABIB's members do not provide financial services relating to a financial product.
<p>B3 We propose to tailor licence authorisations in relation to certain digital assets that are derivatives, and for digital assets that are 'miscellaneous financial investment products'.</p>	<p>B3Q1 In relation to the authorisations sought during an AFS licence application, do you agree that the existing authorisations are generally appropriate to digital asset service providers?</p> <p>B3Q2 Do you agree with the proposal to tailor the derivatives and miscellaneous financial investment products authorisations? Are there any others that you would recommend?</p>	<p>N/a - ABIB's members do not provide derivatives or 'miscellaneous financial investment products' with respect to digital assets. Bitcoin-only should continue to be regulated through AUSTRAC registration only (if required).</p>