

Question 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

Referring to Part F to INFO 225, there is not a clear context in relation to how overseas categorisations of crypto-assets could translate to the Australian context, e.g. the draft GENIUS Act proposes that stablecoin is not to be classified as “securities” in the United States, while it still looks unclear as to whether it is considered as a financial product in the Australian context.

We appreciate of more guidance and clarity to be given, and is happy to provide comments at a later stage.

Question A1Q2

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

Response

Please refer to our response to Question A1Q1.

Question 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

Based on ASIC's current guidance, we have no further comments on this question.

Question 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

Please refer to our response to Question A1Q1. From the examples quoted in paragraph 15, it appears that items like “tokenised concert ticket” or “membership NFT” are just a digital version of a physical item and questions is raised as to whether these shall be considered as a “current financial product”.

Question 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

Please refer to our response to Questions A1Q1 and A2Q1.

Question A2Q3

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

Response

We are not yet in a position to respond to this question, and is happy to provide comments once more guidance is provided by the ASIC.

Question 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

We support ASIC's proposal to include an example of a "stablecoin" in INFO 225. The potential examples in paragraph 21 are largely inline with international standards (e.g., the European Union, Hong Kong, Singapore, and the U.K. proposal), but further clarifications should be given on whether the money raised would need to be deposited only to "local" Australia licenced entities' bank account or could be deposited outside Australia.

Question 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.

Response

According to the FSB and the BIS, stablecoin is defined as "a crypto-asset that aims to maintain a stable value relative to a specified asset, or a pool or basket of assets" and "cryptocurrencies with values tied to fiat currencies or other assets", respectively.

On the basis where fiat currencies are not being considered as financial products, we are unsure whether the fiat-referenced stablecoin (which is the cryptographically secured digital representation of value that, among other features, purports to maintain a stable value with reference to one or more fiat currencies), should be considered as a financial product.

Question 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 support ASIC's proposal that regulatory relief is needed to facilitate the regulatory transition/ introduction. Given that "fiat-referenced stablecoin" regulations are already introduced in some jurisdictions (e.g., the European Union, Hong Kong, Singapore), some regulatory compliant (and based on the FSB framework where the Department of the Treasury and the Reserve Bank of Australia are FSB members) stablecoins were issued and supported by subscription, circulation and redemption activities. While these stablecoins may not necessarily be denominated in Australian dollars and very likely be in the US dollars, question lies with how they are to be locally regulated in each jurisdiction.

Taking Hong Kong as an example, any issuance of "fiat-referenced stablecoin" would need to the Hong Kong Monetary Authority licenced and hence, certain "passporting" or "mutual recognition" framework is implanted as to facilitate any future inclusion or recognition of any other jurisdictions' issued regulatory compliant stablecoin. We believe the ASIC should take note on these and to issue further guidance on whether and how existing "fiat-referenced stablecoin" could be grandfathered or on what basis they could be recognised and the duration of the transition period.

Question B1Q1

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

Response

Based on ASIC's current proposal, we have no further comments on this question.

Question 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

Based on ASIC's current proposal, we have no further comments on this question.

Question 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

We 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, where we believe is very similar to the FCA model as proposed in DP24/4. Based on ASIC's current proposal, we have no further comments on this question.

Question 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

We agree that there should 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 to avoid any potential regulatory arbitrage or circumvention. Based on ASIC's current proposal, we have no further comments on this question.

Question 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

We believe that sound and robust disclosure is important for customers' confidence and acceptability in both the financial infrastructure and the specific financial product. As a result, we would believe that whether the class no-action position could be granted should depend on the PDS as prepared where such should be vetted for ASIC's satisfaction.

Question 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.

Response

While we agree on IOSCO's "same activity, same risk, same regulation/ regulatory outcome" principle, we believe that digital assets and traditional financial products are of different categories by nature. From a licencing perspective, they may look similar in terms of paid-up capital, corporate governance, entity structure, etc..., in fact they are different in terms of product structure, audience, or even from an operational standpoint. Say for example from an on-boarding perspective, traditional financial products requires off-ramp KYC while there is a need for on-ramp KYC for digital assets and further, the service vendors are different as well.

Having said that, based on the question being asked, we would appreciate for ASIC's further guidance and clarification on the "regulatory obligations" as defined, and is happy to provide comments once available.

Question B2Q2

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

Response

Please refer to our response to Question B2Q1.

Question 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

Please refer to our response to Question A1Q1 regarding the definition of “financial product”. Setting this aside, we have no further comments on this question based on ASIC’s current guidance.

Question 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

Option 5 in Regulatory Guide 105 AFS licensing: Organisational competence (RG 105) requires applicants to demonstrate to ASIC’s satisfaction that the responsible manager has appropriate knowledge and skills for their role by written submission. We believe that this is a common approach adopted by global regulators but further clarification is appreciated for definition of “an industry association” and “relevant overseas body” as it is important only to refer to the reputable and trustworthy ones.

Question 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

We are not yet in a position to respond to this question, and is happy to provide comments once more guidance is provided by the ASIC.

Question B3Q2

Do you agree with the proposal to tailor the derivatives and miscellaneous financial investment product authorisations? Are there any others that you would recommend?

Response

Based on ASIC’s current proposal, we have no further comments on this question.