



ASIC - Public consultation 381

Updates to INFO 225

Digital Assets: Financial products and services

WIREX

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25 February 2025

Dear Digital Assets Team,

The Wirex Group and its subsidiary Wirex Australia Pty Ltd (together, **Wirex**) welcome the opportunity to comment on ASIC's consultation paper 381 relating to updates to INFO 225: Digital assets: Financial products and services.

Introduction

Wirex appreciates the opportunity to contribute to ASIC's proposed amendments to INFO 225: Digital Assets: Financial Products and Services. Wirex is an international digital payment solutions and cryptocurrency services company that fosters innovation while maintaining strong compliance standards. We appreciate ASIC's efforts to revise guidance to reflect the digital asset landscape as a whole, particularly with respect to clarifying regulatory requirements and making the transition into international regulations.

Wirex understands the need for regulatory clarity and uniformity to mitigate risks around digital assets and protect Australian consumers. Although we broadly welcome the updated proposal, we believe it is important to strike a balance and stay as practical as possible without increasing the operational burden on compliant enterprises. Guidance, transitional requirements, and scalability in practice are essential for creating a climate where innovation and regulation are compatible. Wirex looks forward to continued collaboration and is happy to explore any elements of this submission in further detail to assist in advancing a realistic and ambitious regulatory environment. Our detailed submission to 12 of the 20 Consultation Questions outlined in the Consultation Paper are set out below.

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

We support and appreciate the detailed breakdown of the products and the associated assessments. We would like to highlight 3 of the assets included that we believe may not be relevant in this breakdown for reasons shared below:

NFTs are unique cryptographic tokens that exist on the blockchain, and as these are "non-fungible", no two tokens are the same. NFTs are commonly bought with cryptocurrency on the blockchain (fiat can also be used on some platforms) and are not a mode of payment themselves. NFT is not generally considered as legal tender. At most, NFTs can be considered as limited purpose digital payment tokens as these are non-fungible and can be exchanged for only specific goods. Therefore, including NFTs as a regulated product has the potential to cause confusion within the sector and possible misalignment with other regulated jurisdictions.

Meme coins, as stated, these are with minimal utility or value and marketed as speculative investments, thereby making this high risk and extremely vulnerable to fraudulent activities. As explained in detail in sections below, if the main objective of these regulations is to ensure consumer protection and good governance by the issuer/facilitator of digital assets, excluding meme coins from ASIC oversight will open the gates for bad actors to infiltrate the market leading to a rise in fraud rates and depreciation in consumer trust.

Tokenised tickets and prepaid services are not generally considered as a mode of payment. These have a value in themselves and can be exchanged for only specific goods. It is unusual for these to have resale guarantees or investment like features, and if they do, these would be treated as securities and thereby as a financial product. Hence, including these as a standalone regulated product could potentially lead to uncertainty and confusion for those who offer regular prepaid services.

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.

We agree with ASIC's proposals of good practice guidance directed to regulated entities providing custodial and depository services. In facilitating transactions in digital assets, consumers commonly entrust their digital assets to the digital asset service providers, therefore, effective and robust arrangements for the identification and segregation of consumers' assets are key to mitigating the risk of loss or misuse of consumer assets.

In the proposal for securing the access and storage of digital assets, it is suggested to utilise cold storage mechanism via isolating the hardware device holding the private key. Another consideration to achieve cold storage mechanics is to isolate the network of where the private key is stored, which will also achieve the same outcome of ensuring there is no easy access to the private keys.

Multi-party computation of consumers' assets is another mechanism to achieve secure transmission and storage, where no single party holds all the information. The protocol protects the cryptographic keys from misuse and access by bad actors.

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.

Given the rising global trend of yield-bearing stablecoins that offer consumers additional financial benefits, it is encouraging to see ASIC considering the potential of including these within the regulatory scope. Implementing an ASIC regulated stablecoin could significantly enhance the competitiveness of such stablecoins by aligning consumer expectations and market trends. Only by offering competitive product can businesses be motivated to absorb higher operational and compliance costs associated with adhering to the ASIC regulatory framework for issuing ASIC regulated stablecoin.

In addition, if ASIC were to propose the development of partnerships between government agencies and AU private sector firms to co-develop and promote the use of ASIC regulated stablecoins, these collaborations could focus on specific use cases that demonstrate the benefits of stablecoins in real-world applications, such as remittances, online payments, and business-to-business transactions. ASIC approved stablecoins will adhere to a higher standard of value consistency. Therefore, any public awareness and marketing initiatives could help to differentiate them from other digital currencies and emphasise their backing by a reputable regulatory body.

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

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

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

While supportive, we recommend certain refinements to enhance the proposed no-action position. First, clear communication channels should be established to streamline the process for notifying ASIC of an intent to apply for a licence. This could include an online portal or standardized forms to ensure timely communication and efficient tracking of notifications and applications. Additionally, the exclusion of crypto lending/earn products and derivatives referencing digital assets might inadvertently discourage innovation or create regulatory grey areas. Instead of a blanket exclusion, a risk-based approach could allow certain low-risk products to benefit from the no-action position under additional safeguards.

We also propose that digital asset businesses registered and in good standing with AUSTRAC should be eligible for the no-action position, even if they have not yet filed for an Australian Financial Services Licence (AFSL). This recommendation is grounded in the understanding that regulatory ambiguity in this space has deterred many businesses from applying for an AFSL due to the significant costs and uncertainty involved. We argue that registration with AUSTRAC demonstrates a commitment to meeting compliance standards and indicates that these businesses are already taking steps to mitigate risks related to money laundering and terrorism financing. Excluding these businesses from the no-action position would unfairly penalize those that have been awaiting regulatory clarity prior to filing for an AFSL. Recognizing AUSTRAC Digital Currency Exchange (DCE) registration as a criterion would foster inclusivity and fairness while encouraging businesses to transition into the AFSL framework.

For foreign entities, the requirement to register as a foreign company under the Corporations Act is reasonable provided that ASIC provide further guidance on the registration process, timelines, and potential challenges. This would help foreign businesses unfamiliar with Australian requirements navigate the process more effectively. The proposal's inclusion of derivatives referencing wrapped tokens is also welcome; however, further clarity on what constitutes a wrapped token would help avoid ambiguity and ensure consistent compliance.

The digital asset industry is rapidly evolving, and this transitional relief supports industry participants in achieving compliance without jeopardizing their operations. It also reflects ASIC's commitment to fostering innovation while ensuring consumer protection and market integrity. By addressing these recommendations, particularly by considering AUSTRAC DCE registration as a criterion, ASIC can ensure the no-action position is both practical and equitable, achieving its dual objectives of facilitating compliance and safeguarding market participants.

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.

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

We support ASIC's position that the same regulations should be applied to digital assets as to conventional financial instruments in the same groups. We propose that these regulatory obligations must include more robust regulatory controls for all meme coins than those suggested. It is our opinion that treating digital assets differently depending on the novelty or medium introduces regulatory blind spots that are incredibly risky to retail investors and may undermine ASIC's mandate under the ASIC Act.

ASIC is required, under the ASIC Act, to ensure that the financial system functions well and can continue to function better, to foster the confidence and education of investors and consumers, to administer the law properly and to ensure that the public has access to information about companies and organisations. Failure to monitor meme coins will not allow ASIC to meet its purpose, which is to "elicit informed and reliant investment and consumer engagement in the financial system."

The purely non-valuable or useful nature of Meme coins is designed into the system and solely fuels speculation and hype. And yet they will often behave like speculative financial instruments such as derivatives or penny stocks, which are strictly regulated. Excluding meme coins from this type of oversight will allow ASIC to leave a high-risk, low-control section of the financial market that corrodes investor trust and supports fraud.

Recent failure of \$HAWK token shows just how lethal unregulated meme coins can be. Funded by a viral social media post, \$HAWK climbed from \$16.69 million in market cap to \$491 million, and then crashed in less than 24 hours, wiping out more than 90% of its value. Investors, many of whom were crypto novices, are now suing the founders for insider trading and abandonment of the project, after inflated the token's price. In addition, the suit says the token also had the nature of an unregistered security and relied entirely on the managers efforts of its creators, so investors lacked oversight or protection.

The above is just the latest example of this sort of fraudulent activity and shows how unregulated meme coins subject retail investors to enormous financial losses and have damaged confidence in the rest of the crypto space. When the risks investors face is this great, in such an unexamined environment, it could undermine the credibility of ASIC's role as an agent of responsible and educated participation at risk. Additionally, meme coins' very base of speculative advertising and influencer hype makes them susceptible to price manipulation and scams. Standard financial products are regulated to avoid such behaviours and to bring transparency, accountability and consumer protection. Adding meme coins to this list would be consistent with ASIC's requirement to ensure investors are safe and markets remain in good order.

A regulatory system for meme coins would allow ASIC to quickly acquire, process and release information on these assets to the public so investors can have accurate and timely data. That transparency would enable the financial system to run more efficiently and reduce fraud risk. Meme

coins, if not properly monitored, risk damaging investor trust and the financial system participation – this is in direct contravention of ASIC’s statutory obligations.

The \$HAWK example also shows how hard it is to enforce in the absence of clear regulation. Legal action can focus on whether the token is a security or not, but since there is no definitive model, there is room for a grey area and illicit actors can use the regulatory holes to bypass responsibility. ASIC would tamper with these loopholes by treating meme coins as securities and therefore more effective in its enforcement efforts, consistent with its obligation to do what it takes to enforce and apply the law.

We submit that ASIC consider a more robust regulation of meme coins which would allow retail investors to invest in the financial system with a level of confidence and knowledge that’s consistent with ASIC’s goals. Not doing so could leave a chaotic space open for investor abuse, enabler of fraud and undermine the efficiency of the financial system as a whole. By adding the same regulatory requirements to meme coins, ASIC can continue to be a champion of market integrity and consumer trust as the financial system matures in a responsible way.

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?

In applying Option 5 from Regulatory Guide 105 to entities providing financial services related to digital assets that are financial products, ASIC should consider several factors, reflecting the unique and evolving nature of digital assets. First, the nature and complexity of the digital assets and services should be assessed. ASIC should distinguish whether the digital assets in question are traditional financial products, such as tokenized securities, or novel financial products with unique features like governance tokens or decentralized finance protocols. The complexity of the underlying technologies, such as blockchain or smart contracts, should also be evaluated to ensure responsible managers (RMs) understand the operational and regulatory implications.

A critical consideration is an RM’s understanding of the legal and compliance frameworks governing digital assets. This includes AML/CTF obligations, licensing requirements under the Corporations Act, and adherence to ASIC’s policies on digital assets. Additionally, given the high cyber and operational risks in digital asset markets, ASIC could require RMs to demonstrate expertise in risk management and cybersecurity. This might include knowledge of custody solutions for digital assets, cyber resilience strategies, and risk assessments tailored to the volatility and fraud risks associated with digital assets.

Under Option 5, ASIC has the flexibility to accept innovative demonstrations of competence. For digital asset services, this could include experience working on tokenized financial products, participation in regulatory consultations, or involvement in the technical and legal audits of digital asset projects. Recognizing the international context of digital asset markets, ASIC could also value qualifications or experience obtained under comparable regulatory frameworks, such as those from the US SEC, UK FCA, or Singapore MAS. This would ensure RMs bring cross-jurisdictional insights that are often necessary for businesses operating in the global digital asset ecosystem.

ASIC might also emphasize the ‘collective expertise’ of RMs within an organization. Specifically, ASIC could adopt a “team approach” where different RMs contribute specialized knowledge in technology,

legal, operational, and financial domains, aligns with Option 5's flexibility. Furthermore, RMs should demonstrate adaptability to evolving regulations, highlighting their proactive approach to staying informed on changes in laws and guidelines surrounding digital assets.

Finally, given the diversity and innovation within the digital asset space, ASIC should apply Option 5 on a case-by-case basis, tailoring its assessment to the specific nature of the entity's services and products. Supporting documentation, such as technical white papers, compliance roadmaps, or operational frameworks, could provide valuable context in evaluating organisational competence. By adopting a balanced approach, ASIC can leverage Option 5 to ensure entities maintain organisational competence while fostering innovation and protecting market integrity in the digital asset sector.

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?

A central issue is the ambiguity in defining whether certain digital assets qualify as financial products. While the Corporations Act broadly defines financial products, its application to digital assets often results in subjective interpretations. For example, ASIC's worked examples illustrate inconsistency, where a token issued to fund an exchange might be classified as a financial product if marketed with the expectation of financial returns, yet similar arrangements for pre-paid services might not receive the same treatment. Additionally, tokens marketed as stablecoins or linked to real-world assets like gold are frequently presumed to be managed investment schemes or derivatives, but the exact boundaries of these classifications remain unclear.

The licensing obligations for digital asset service providers also reveal inconsistencies. Providers offering staking services might be required to meet managed investment scheme obligations due to the pooling of funds, while other services with comparable features may not face the same scrutiny. For instance, ASIC's guidance suggests that wrapped tokens and certain stablecoins could be classified as derivatives, yet the threshold for such classifications is unevenly applied, leading to operational uncertainty. Furthermore, decentralized platforms offering similar services often operate outside the licensing framework entirely, creating an uneven playing field.

ASIC should introduce clearer and more consistent classification criteria for digital assets, particularly in ambiguous cases like stablecoins, staking services, and wrapped tokens. Tailored licensing requirements specific to digital asset service providers would better reflect the technological and operational differences from traditional financial products. Aligning Australian regulations with international frameworks, such as Europe's MiCA and Singapore's PSA would also promote a more globally consistent regulatory environment. By addressing these issues, ASIC can create a more effective and equitable licensing regime that supports innovation while protecting investor interests.

In conclusion, Wirex commends ASIC for its proactive approach in updating INFO 225 to address the dynamic and evolving digital asset landscape. Clear and practical guidance is essential to ensure regulatory compliance, consumer protection, and market integrity while fostering innovation within the sector. While Wirex supports the proposed updates, we emphasize the importance of implementing these changes in a way that minimizes undue burdens on businesses striving to operate transparently and in good faith. By adopting transitional measures, providing scalable requirements, and maintaining ongoing dialogue with industry stakeholders, ASIC can achieve a balanced framework that benefits both regulators and market participants. Wirex remains committed to collaborating with ASIC and other stakeholders to help shape a robust and forward-thinking regulatory

environment for digital assets. We are available to discuss any aspects of this submission further and look forward to contributing to this critical initiative.

Yours Faithfully,

Massimo Chiantia

Compliance Manager, AMLCO

The Wirex logo, featuring a stylized 'W' icon followed by the word 'wirex' in a bold, lowercase sans-serif font.