

By email: digital.assets@asic.gov.au

Digital Assets Team
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

25 February 2025

Updates to INFO 225: Digital assets: Financial products and services (CP381)

Dear Digital Assets Team,

Binance Australia is a registered digital currency exchange with AUSTRAC. Binance Australia thanks you for the opportunity to comment on the *Australian Securities and Investments Commission Updates to INFO 225: Digital assets: Financial products and services (CP381)*.

As an exchange that believes in the value of fair, efficient and transparent markets, we welcome opportunities to collaborate with policymakers and regulators to contribute to the development of a regulatory framework with consumer protection and market integrity at its heart. We will continue to work constructively with regulators and engage in these important conversations in the interest of helping to grow virtual asset markets around the world.

Please see our response which is contained in the **Annexure**.

Please let us know if we can assist further with this topic.

Yours faithfully

Binance Australia

ANNEXURE

A1Q1 - Are there any topics or guidance that have not been included in the draft updated INFO 225 that you think should be? Please provide details.

Distinguishing Utility Tokens from Financial Products: ASIC should develop a clear framework distinguishing utility tokens from financial products, ensuring businesses offering non-financial services are not unnecessarily captured. This would prevent unnecessary regulatory burdens on businesses that use tokens for access rights, loyalty programs, or governance purposes.

Decentralized Finance (DeFi): While the draft touches upon certain DeFi elements, a more in-depth discussion on DeFi platforms, including decentralized exchanges (DEXs), lending protocols, and yield farming, would be beneficial. Clarification on how existing regulations apply to these decentralized services, especially in the absence of a central controlling entity, would aid industry participants.

Clear Guidelines for DeFi and Smart Contracts: ASIC should explicitly state whether decentralized finance (DeFi) applications that do not involve intermediaries are subject to financial services licensing requirements. Without such guidance, market participants operating decentralized protocols may face uncertainty regarding their compliance obligations, which could discourage innovation in the sector.

Interoperability and Cross-Chain Transactions: As digital assets often operate across multiple blockchain networks, guidance on the regulatory considerations for cross-chain transactions and interoperability solutions would be valuable.

Harmonization with Global Standards: Aligning with international regulatory approaches (e.g., MiCA in the EU, SEC guidance in the US) would foster cross-border regulatory consistency and reduce compliance costs. This would help Australia remain competitive in the global digital asset space by ensuring regulatory coherence with key financial jurisdictions.

Environmental, Social, and Governance (ESG) Considerations: Given the growing emphasis on ESG factors, it would be pertinent to include guidance on how ESG considerations intersect with digital asset offerings, particularly concerning the environmental impact of blockchain operations.

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

Included topics appear pertinent to the current digital asset landscape. However, it's crucial to ensure that the guidance remains technology-neutral and does not inadvertently favour or disadvantage specific technologies or business models.

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.

The following additional good practices could be considered:

- **Staking Services:** For custodians offering staking services on behalf of clients, guidance should emphasize the importance of transparent communication regarding the risks and rewards associated with staking, the selection criteria for staking pools or validators, and the procedures in place for managing potential slashing events;
- **Insurance and Risk Mitigation:** Encouraging custodians to obtain insurance coverage for digital assets under custody and to implement robust risk mitigation strategies against threats such as cyber-attacks, internal fraud, and technical failures would enhance client confidence;
- **Regulatory Compliance Across Jurisdictions:** Given the global nature of digital assets, custodians should be guided on maintaining compliance with regulatory requirements in multiple jurisdictions, especially when serving international clients; and
- **Impact of Custodianship and Intermediaries:** ASIC should expand on whether businesses facilitating custodianship and non-custodial services bear additional regulatory responsibilities. Given that custodians handle third-party assets, clear obligations regarding security, risk management, and consumer protection are necessary to ensure trust in the ecosystem.

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.

NFTs and Tokenized Assets: ASIC should clarify whether NFTs used for access rights or membership benefits fall under financial product classification. Many NFTs function primarily as collectibles or access passes rather than investment products, and an overbroad classification could hinder their utility in creative and entertainment industries.

Stablecoins: The examples on stablecoins should further differentiate between algorithmic stablecoins and asset-backed stablecoins. While asset-backed stablecoins pegged to fiat currency (or other assets) may have financial product characteristics, algorithmic stablecoins which operate autonomously through smart contracts, and without an identifiable issuer or counterparty, may not qualify as financial products. In such a scenario, there may be no issuer, counterparty, or contractual obligation to provide liquidity or maintain the peg. **Ampleforth (AMPL)** is an example of a stablecoin option that relies on software (not any central operator).

Tokenized Real-World Assets (RWAs): The examples concerning tokenized commodities and securities should clarify the distinction between regulated securities tokens and non-financial utility tokens representing ownership. For instance, tokenized real estate shares might be considered a financial product, but digital representations of real estate utility (e.g., fractionalized rental rights) might not.

The examples tend to imply that almost all of the examples where something is not a financial product involve NFTs. It is generally clear to the industry that NFTs and use cases around NFTs are not financial products. ASIC appears to be indicating by way of the examples that in almost all other cases, an AFSL is required. More nuance and examples recognising the diversity and complexity of the overall digital asset ecosystem would be welcome.

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.

Non-cash payment facilities: Further clarity is sought on the scope of non cash payment facility as applied to digital asset exchanges which custodise client assets. The core business of digital asset exchanges is to allow users to trade digital assets. However as part of that a user must be allowed to transfer assets into and out of the wallet. If this is incidental to the trading services, presumably this is not a non cash payment facility. Clarity on this point is important, in particular whether there is a difference between a “transfer” and a “payment”.

NFTs: Many NFTs are used to grant access to services (e.g., event tickets, subscriptions, community memberships). It would be helpful to clarify that NFTs providing access or membership rights are not financial products, provided they do not involve financial investment or expectation of profit.

Staking tokens: Staking-based yield tokens vary widely in structure. Some may resemble deposit-like products, while others merely reflect network participation rewards. Including examples addressing staking tokens and their differentiation from interest-bearing financial products would provide essential guidance.

Utility tokens: Many in-game assets and metaverse tokens are used strictly for utility purposes and do not constitute financial products. However, some projects allow users to earn passive income, which could introduce financial product characteristics. Examples illustrating the boundary between utility and investment function would be useful.

Algorithmic stablecoins: ASIC states that some algorithmic stablecoin may constitute derivatives. It would be helpful for ASIC to explain this analysis in detail and how it fits within the financial product framework considering:

- Algorithmic stablecoins may be classified as derivatives depending on their structure and mechanics. The classification hinges on how the stablecoin achieves its peg, the contractual nature of the arrangement, and the role of counterparties.

- If a stablecoin's value is maintained entirely through market incentives and arbitrage without a contractual obligation, will it meet the traditional definition of a derivative?
- If an algorithmic stablecoin is fully decentralized and operates autonomously through smart contracts, without an identifiable issuer or counterparty, will it meet the definition of a financial product?
- Algorithmic stablecoins may be derivatives depending on their specific design. If they involve contractual relationships where price adjustments are contingent on external asset performance (e.g., futures, swaps, options-like structures), they may be subject to derivative regulations. However, will pure algorithmic models relying solely on market incentives without contractual obligations fall outside the traditional derivative classification?

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

Overregulation of Non-Financial Digital Assets: Applying financial product definitions too broadly could unintentionally capture non-financial tokens, such as utility tokens, in-game assets, and social tokens, leading to unnecessary compliance burdens for businesses.

ASIC should ensure that financial product classification remains risk-based and does not inadvertently cover assets with purely functional or utility-driven purposes.

DeFi and Smart Contracts Complexity: The lack of centralized intermediaries in DeFi means that applying traditional financial product definitions could be problematic. For example, if smart contract-based lending is treated as a financial product, compliance obligations may fall onto developers who have no ongoing control over the protocol.

ASIC should consider a functional regulatory approach that focuses on who exercises control and financial intermediation.

Impact on Innovation and Market Entry: Overly broad financial product classifications could deter innovation in Australia's digital asset sector, driving projects toward jurisdictions with more nuanced regulatory frameworks.

A sandbox or phased compliance approach for digital asset firms, particularly startups and DeFi developers, would enable businesses to innovate while working toward regulatory clarity.

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?

Yes, including an example of a wrapped token and/or a stablecoin would be highly beneficial in INFO 225, given the increasing usage of these assets within digital finance ecosystems.

Wrapped Tokens: The example should clarify how wrapped tokens function and whether they are considered financial products based on their issuance, control, and backing mechanisms. Key features to highlight include:

- Whether the wrapped token is fully backed 1:1 by the underlying asset;
- Whether the issuer retains control or if the wrapping process is automated and decentralized; and
- If users can redeem wrapped tokens for the underlying asset freely or if intermediaries are involved.

Stablecoins: The example should distinguish between:

- Fiat-backed stablecoins (e.g., USDC) where funds are held in reserves and the regulatory implications of such structures;
- Algorithmic stablecoins that rely on smart contract mechanisms to maintain stability, which may not always classify as financial products; and
- The role of issuers, custodians, and redemption mechanisms in determining regulatory treatment.

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.

Businesses involved in providing services related to wrapped tokens and stablecoins face several practical implications:

- **Licensing and Compliance Costs:** If these assets are deemed financial products, businesses issuing, trading, or providing custodial services for them would need to acquire relevant AFS licenses, significantly increasing compliance costs and regulatory burdens;
- **Impact on Decentralized Issuance Models:** Many wrapped tokens operate within decentralized environments, where there is no central issuer. Applying traditional financial product regulations to decentralized systems could create enforcement challenges and regulatory uncertainty;
- **AML/CTF Compliance:** Businesses facilitating stablecoin transactions may be required to implement Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) measures, particularly if they provide on/off-ramping services between fiat and stablecoins; and
- **Banking and Reserve Requirements:** Issuers of fiat-backed stablecoins may need to maintain segregated reserves and comply with capital adequacy requirements, akin to electronic money institutions (EMIs) under international regulations.

To mitigate these challenges, ASIC should consider a proportional regulatory approach that distinguishes between centralized and decentralized models and provides clear compliance pathways for different business structures.

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.

Yes, transitional provisions or regulatory relief would be essential to facilitate a smooth transition. Specific considerations include:

- *Time-Limited Regulatory Sandbox:* ASIC could establish a sandbox program allowing stablecoin issuers and wrapped token providers to continue operating under interim measures while adapting to new regulatory requirements;
- *Gradual Licensing Requirements:* ASIC could introduce phased compliance, where businesses are given a grace period (e.g., 12-24 months) to meet licensing and compliance obligations;
- *Clarification of Future Regulatory Alignment:* If the Government is proposing separate legislation or new frameworks for stablecoins and wrapped tokens, ASIC should clearly outline how businesses can transition from the current regime to the future framework without disruption; and
- *Exemptions for Decentralized Systems:* Transitional relief should consider whether non-custodial or decentralized issuers require distinct treatment, given the lack of direct control over issuance and redemption processes.

Implementing these measures would ensure that businesses can adapt to regulatory changes without undue disruption, allowing innovation while maintaining financial stability and consumer protection.

B1Q1 - Do you agree that ASIC should progress with a class no-action position as proposed here? If not, please give reasons.

Yes, we agree that ASIC should progress with a class no-action position. This approach would provide regulatory certainty and allow market participants to transition smoothly to compliance without unnecessary disruption.

B1Q2 - Are the proposed conditions appropriate? Are there any additions or changes to the proposed conditions that will be more effective for investor protection?

The proposed conditions are generally appropriate; however, we recommend the following enhancements:

- *Enhanced Transparency Requirements:* Entities relying on the no-action position should be required to disclose their regulatory status and provide risk disclosures to investors;

- *Risk-Based Thresholds:* Different conditions should apply based on the nature of the digital asset service (e.g., custody vs. trading platforms) to ensure proportional regulatory oversight; and
- *Periodic Reporting to ASIC:* Businesses availing the no-action position should submit periodic reports outlining their progress toward compliance.

These conditions would strengthen investor protection while allowing businesses to transition effectively.

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.

Yes, making the no-action position contingent on lodging an AFS license application or expressing written intent ensures that only serious market participants benefit from the relief.

However, we recommend:

- A pre-screening process to ensure that only applicants with a credible compliance plan qualify for the no-action relief; and
- Allowing an extended grace period for businesses engaging in regulatory discussions but facing delays in formal application processing.

This would ensure that the relief is used by genuine applicants while preventing misuse by entities with no intention of compliance

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.

Yes, a deadline should be set to prevent indefinite reliance on the no-action position. We suggest:

- A 12-month timeframe for entities to apply for an AFS license or commence pre-lodgement discussions; and
- A provision for case-by-case extensions where businesses demonstrate valid reasons for delays.

Setting a deadline ensures regulatory certainty while allowing flexibility for businesses facing legitimate challenges in the application process.

B1Q5 - For product issuers, should the no-action position extend to other obligations—for example, to prepare a Product Disclosure. Why or why not?

The no-action position should not automatically extend to all other obligations, including the requirement to prepare a Product Disclosure Statement (PDS).

However, we propose:

- A limited exemption period for PDS preparation, provided the issuer maintains alternative investor disclosures; and
- Tiered exemptions based on risk levels; for example, wholesale-only offerings may require less stringent disclosure compared to retail-focused products.

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.

Yes, we agree that equivalent regulatory obligations should apply to digital assets and traditional financial products of the same category where their risk profiles and economic functions are similar. This ensures regulatory consistency and prevents arbitrage opportunities.

However, there are cases where digital assets require tailored regulatory considerations, including:

- *Decentralized governance models:* Many digital assets operate without a central issuer, making traditional regulatory frameworks less effective; and
- *Smart contract automation:* Unlike traditional securities, certain digital assets execute transactions programmatically, which may reduce reliance on intermediaries.

Example: Tokenized stocks or derivatives should be subject to existing financial regulations governing securities and derivatives. However, governance tokens or decentralized finance (DeFi) liquidity pool tokens may require distinct considerations based on their decentralized structure.

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

Yes, ASIC's guidance should consider the following tailored approaches for digital assets:

- *Custodianship & Self-Custody:* Unlike traditional securities, many digital assets are self-custodied, which changes the risk profile for investor protection;
- *Liquidity Considerations:* Digital asset markets operate 24/7, unlike traditional exchanges with set trading hours, which impacts price discovery and investor protections; and
- *Staking & Yield-Generating Products:* Digital assets frequently involve staking mechanisms that do not have traditional equivalents, requiring clear guidance on classification.

ASIC should provide more granular examples of how these unique features influence regulatory obligations and ensure that rules remain flexible and adaptive to ongoing innovations in digital finance.

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.

We generally support ASIC's proposed approach to custodial and depository services, but there are key concerns:

- *Omnibus Client Accounts:* While extending omnibus accounts to digital assets can enhance operational efficiency, risks such as rehypothecation, security breaches, and private key management should be carefully addressed;
- *Consumer Protection Risks:* Digital asset custodianship entails unique risks (e.g., private key mismanagement, smart contract vulnerabilities). ASIC should mandate enhanced disclosure and transparency regarding custody arrangements; and
- *Cold vs. Hot Wallets:* Custodians should be required to maintain a mix of cold and hot storage solutions to balance security with liquidity needs.

A risk-based framework should be applied to custodianship to ensure investor protection while fostering innovation in the digital asset space.

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?

ASIC should tailor Option 5 in RG 105 to reflect the unique requirements of digital asset businesses. Key considerations include:

- *Technical Competency Requirements:* Given the complexity of blockchain technology, AFS license applicants should demonstrate knowledge of smart contracts, private key security, and consensus mechanisms;
- *Operational Risk Management:* Entities should establish robust cybersecurity measures to protect digital assets from hacks and unauthorized access;
- *Market Integrity & Surveillance:* Digital asset markets function differently from traditional finance. Firms should establish on-chain monitoring capabilities to track illicit activities and maintain regulatory compliance; and
- *DeFi-Specific Considerations:* Given that many financial services in digital assets are non-custodial and decentralized, ASIC should consider flexible licensing models that account for permissionless innovation.

A more technology-aligned competency framework would ensure that regulatory requirements remain effective without stifling innovation in the sector.

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?

We agree that the existing authorisations under the AFS licensing framework are broadly appropriate for digital asset service providers. However, there are specific areas where additional clarity or modifications may be beneficial:

- *Digital Asset-Specific Authorisations:* The nature of blockchain-based financial services introduces new operational models, such as decentralized exchanges (DEXs) and automated market makers (AMMs), which may not neatly fit within traditional financial product classifications;
- *Smart Contract and Custody Considerations:* Firms operating in digital assets often use automated smart contract execution, requiring an assessment of whether existing authorisations adequately cover these functionalities; and
- *Market-Making and Liquidity Provision:* Some DeFi protocols function as liquidity providers rather than traditional market operators. Clarity on whether such activities require additional authorisation would be beneficial.

Tailoring authorisation requirements to address blockchain-native business models would help ensure that licensing obligations remain fit-for-purpose while allowing for continued innovation.

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?

Yes, we support the proposal to tailor the derivatives and miscellaneous financial investment products authorisations to better reflect the unique characteristics of digital assets. The following additional considerations should be addressed:

- *Tokenized Derivatives:* Existing derivatives authorisations may not fully account for on-chain derivatives, which often use automated, decentralized protocols rather than traditional counterparties. Further guidance on how smart contract-based derivatives fit within the licensing framework is needed;
- *Yield-Generating Financial Products:* Many digital asset products involve staking, lending, and liquidity mining, which may share characteristics with traditional financial products but also involve unique risks (e.g., impermanent loss, smart contract vulnerabilities). A more granular approach to categorizing these products would provide better regulatory certainty; and
- *Hybrid Financial Products:* Some digital assets blend multiple financial functions (e.g., governance, staking rewards, revenue-sharing mechanisms). The regulatory treatment of such hybrid products should be clarified to ensure businesses understand their compliance obligations.