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March 3, 2025

EMAIL SUBMISSION TO: digital.assets@asic.gov.au

Re: ASIC Consultation Paper 381 - Updates to INFO 225: Digital assets: Financial products and services

To whom it may concern,

Hedera welcomes the opportunity to respond to Australia's Securities and Investment Commission (ASIC) Consultation Paper 381 ([CP381](#)) proposal to update [Information Sheet 225](#) on digital assets and financial products & services.

Hedera Hashgraph is an open-source, public distributed ledger technology (DLT) providing secure infrastructure for enterprises and web3 applications. Its unique architecture is based on the Hashgraph consensus algorithm, which uses a gossip-about-gossip protocol and virtual voting to achieve high throughput, low latency, and strong security. Hedera stands out for its ability to process tens of thousands of transactions per second with finality as well as low and predictable fees. This makes its protocol suitable for applications across various regulated industries and use cases including finance, health care, supply chain management, treasury management and more.

Hedera is governed by the Hedera Governing Council, comprising up to 39 global organizations across technology, finance, law, and academia. Members operate network nodes and hold equal voting rights on key decisions, ensuring decentralized, transparent governance while preventing single-entity dominance.

The importance of introducing bespoke regulatory frameworks for digital assets

Hedera is cognizant of the fact that, in the absence of a legislative framework granting it the powers to regulate the digital assets industry, the Australian Securities and Investments Commission (ASIC) has relied on existing securities frameworks to provide some clarity to market participants. Although well-intentioned, prioritizing non-binding guidance over advocating for new powers to establish sector-specific rules may be counterproductive to ASIC's investor protection mandate. We believe this approach to be problematic because:

- As seen across other jurisdictions, regulation by enforcement leads to a “first mover penalty”, which in turn has a chilling effect on the market and encourages firms to relocate overseas for fear of regulatory action.
- In contrast, well-defined legislation provides long-term certainty for the industry and therefore signals a commitment towards its sustainable growth in Australia.
- An absence of clear rules or the presence of excessive controls does not eliminate risks associated with digital assets, it just exposes investors to regulatory arbitrage as the sector is pushed into the unregulated space.
- The decentralized, transparent and open nature of certain protocols obviates the need for regulation designed for centralized markets, where information asymmetries abound.
- Where the risks associated with digital assets are unique, traditional securities frameworks may fail to protect consumers.

Investing in regulatory clarity will lay the foundations for a healthier digital assets ecosystem, where consumers can access new services and products with the right protections in place. We would encourage Australia to take this leap forward.

The need for additional clarity on scope, definitions and intended outcomes

While Hedera is in agreement with the topics covered by these changes, we believe additional clarity is needed on the scope, definitions and intended outcomes of ASIC’s powers. As mentioned previously, the effectiveness of the guidance, in particular its ability to uphold market integrity and consumer protections, will in large part depend on the extent to which there is a regulatory pathway to licensing and a predictable set of enforceable requirements. As currently drafted, however, we are concerned that the proposed guidance lacks:

1. A sufficiently nuanced taxonomy for different assets and clarity over exactly what the regulatory trigger points are,
2. Detail over how ASIC plans to differentiate between digital asset issuers and digital asset service providers,
3. An articulation over the risks ASIC is trying to address and the resultant lack of proportionality in its approach

Jurisdictions that are recognized for their standard setting leadership in traditional finance, such as the EU, the UK and Hong Kong and across the APAC region, have deliberately focussed on regulating intermediaries and financial services activities, rather than products which might exhibit financial characteristics. However, ASIC’s guidance would suggest it is departing from international best practice. This divergence is most acute in relation to its broad approach to asset classification, its unintentional capture of decentralized protocols, and its adoption of a more restrictive categorization of staking activities.

We suggest ASIC's approach to *asset classification* could benefit from further nuance in terms of how different assets' inherent characteristics are described and the risks identified in relation to them. For example, the guidance seems to suggest that when something does not represent a financial product, it should be categorised as a Non-Fungible Token (NFTs). We believe it is critical for ASIC to clarify where NFTs do and do not fall under financial regulation, and follow international best practice of leaving these products outside of its perimeter. Furthermore, ASIC's classification of stablecoins would imply all stablecoins should fall under one and the same category. Such approach negates the important distinctions between fiat-backed stablecoins, foreign referenced stablecoins and algorithmic stablecoins, and fails to address the distinctive risks and use cases associated with each. Last but not least, ASIC's categorisation of tokenized commodities and securities does not sufficiently distinguish between regulated securities and non-financial tokens representing ownership. This broad nomenclature might have the impact of inadvertently acting as a deterrent to the market's healthy growth, stemming from concerns that a wide range of non-financial activities associated with different tokens would trigger regulation.

Secondly, Hedera would welcome clarity in relation to the *regulated activities trigger points* and ASIC's *identification of centralised entities* for licensing purposes. Throughout the guidance, there seems to be a lack of differentiation between digital asset issuers and digital asset service providers. This is concerning, as it would suggest ASIC's approach does not recognise the decentralised nature of some networks and their structural differences from centralised entities. We believe that a one-size fits all approach would be impractical from a supervisory standpoint and will fail to address the most important risks. We would encourage ASIC to draw a clearer delineation of where a regulated activity is taking place and explicitly apply its requirements where there is a centralised intermediary involved.

Last but not least, we are concerned that ASIC's suggested approach to *staking* seems to categorize all staking as a regulated activity amounting to a collective investment scheme (CIS). This is problematic and neglects the role that staking plays in powering innovations and network security, both of which sit squarely outside its regulated perimeter. We would encourage ASIC to take into account the approach of other jurisdictions, such as the UK and the EU.

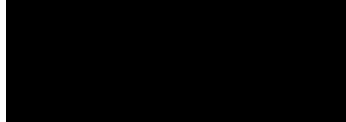
Conclusion

We are encouraged by ASIC's desire to engage industry in updating its guidance and urge work with the government towards implementing a bespoke regime. Guidance that is non-enforceable might lead to confusion, arbitrary enforcement action and deter well intentioned players from innovating. In developing its rules, we believe ASIC should follow international best practice and avoid introducing requirements that inadvertently

bring in assets, services and activities which fall outside its remit. This is particularly the case in relation to ASIC's asset categorisation, the lack of differentiation between service providers and decentralised issuers, and in relation to staking.

Thank you very much for your consideration. We would welcome the opportunity to discuss further, if that would be helpful.

Sincerely,

A large black rectangular redaction box covering the signature of Nilmini Rubin.

Nilmini Rubin, Chief Policy Officer, Hedera

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