



## Crypto Assets

November 2022

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### Key Messages

Crypto remains an area of high strategic priority for ASIC. ASIC has recently released a report of investor research (see more details below). This included alarming findings about the numbers of Australians involved in crypto investments and the extent to which those people understood the risks posed by crypto investments.

ASIC continues to warn investors that these assets are highly volatile, inherently risky and complex.

ASIC will take enforcement action to disrupt and deter harmful products within ASIC's jurisdiction. This includes those that mimic traditional products or seek to circumvent regulation.

ASIC welcomes the joint announcement from the Treasury ministers regarding crypto reforms on 22 August 2022. We particularly welcome the announcement's emphasis on ensuring that investors in crypto assets are adequately protected.

We support the prioritisation of the token mapping exercise in the policy formation process being undertaken by Treasury. We agree that the categorisation of various crypto assets will be a useful basis for determining how they should be regulated. ASIC is working closely with Treasury on this exercise.

We also look forward to working with Treasury on the other aspects of the Government's broader crypto reform agenda including the design and implementation of a licensing framework for crypto.

### Background

ASIC only regulates crypto-assets to the extent they involve financial products or financial services. The scope of ASIC's remit is set by Parliament. Given the nature of crypto-assets, it is often very difficult to identify whether it is, or involves, a financial product.

Crypto-assets that are not financial products are available directly to investors in Australia through local digital currency exchanges (registered with AUSTRAC) and overseas-based crypto-asset trading platforms.

There are also financial products associated with crypto available to Australian investors. These are regulated by ASIC. They include both exchange traded and unlisted managed investment schemes which invest in crypto as well as crypto contracts for difference.

The announcement by the Treasury ministers on 22 August (referred to above) followed a consultation by Treasury conducted from March to May 2022. The consultation paper proposed a bespoke licensing regime for providers of secondary services in relation to crypto assets which were not financial products. It was proposed that the licensing regime would be administered by ASIC. It was proposed that crypto-assets which are financial products would continue to be regulated as such under the current framework.



Treasury's policy program will also ultimately include a review of "innovative organisational structures" including Decentralised Autonomous Organisations (DAOs). It will be a matter for Government to consider whether legal structures for DAOs should be established. ASIC is keeping a close eye on developments regarding DAOs in both the domestic and international jurisdictions.

Treasury is leading a Working Group on regulating the crypto-asset ecosystem, which includes members of the Council of Financial Regulators and other relevant regulatory agencies (AUSTRAC, ACCC). ASIC is closely engaged in the Working Group.

ASIC has been closely monitoring international developments in relation to crypto assets. The sustained downturn in the crypto market has led to a number of high profile collapses and has seen the value of crypto assets drop by around \$US2 trillion in recent months.

Meanwhile, regulators have been refining their responses to crypto. This includes the announcement by the US SEC on 21 July 2022 that insider trading actions have been commenced against a former employee of Coinbase. On 29 August 2022 the Managing Director of the Monetary Authority of Singapore gave a significant address entitled "Yes to Digital Asset Innovation, No to Cryptocurrency Speculation."

### ASIC Action

On referral from ASIC, the CDPP is prosecuting Mr John Bigatton, the former Australian national promoter for the crypto investment scheme BitConnect on charges of providing unlicensed financial services and operating an unregistered managed investment scheme. Trial has been set to commence 31 July 2023.

On 11 August 2022, ASIC released Report 735 Retail Investor Research. The research commissioned by ASIC from SEC Newgate Research. The research included a survey of 1053 active retail investors conducted in November 2021. 44% of those surveyed reported holding cryptocurrency, making it the second most common product type held after Australian shares at 73%. A quarter of surveyed investors who held cryptocurrency indicated that cryptocurrency was the only investment they held.

According to the survey, only 20% of cryptocurrency owners considered their investment approach to be 'risk-taking', raising concerns that investors did not understand the risks of this asset class.

On 31 August, ASIC issued a statement to brokers setting out its expectations of those brokers who choose to offer high risk products and services, including crypto assets, to their clients.

### CONFIDENTIAL

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ASIC made a submission to Treasury's consultation process on crypto-asset secondary service providers earlier in 2022. While the submission is not confidential, the Government has not yet published submissions to that process, although some individual businesses have published submissions they made on their websites. Publication of submissions is a matter for Government.