Digital assets: Financial products and services

Note: This draft information sheet is an attachment to Consultation Paper 381 *Updates to INFO 225: Digital assets: Financial products and services* (CP 381).

This is **Information Sheet 225 (INFO 225)**. It is directed to businesses and people offering products and services in relation to digital assets generally. It will help you to understand your obligations under the *Corporations Act 2001* (Corporations Act) and the *Australian Securities and Investments Commission Act 2001* (ASIC Act) if:

- your business is involved with digital assets—for example, crypto-assets, crypto tokens, utility tokens, asset-referenced tokens, stablecoins, or tokenised assets (including where the underlying assets may be financial products or other assets), whether there are elements that are decentralised or not (e.g. exchanges, intermediaries, digital asset wallet providers, operators of decentralised finance platforms, asset managers and custodians)
- you are, or are considering, issuing or selling digital assets, dealing in (including establishing a platform to trade or facilitate payments) or advising on digital assets or whether to raise funds or otherwise, or offering other products or services related to digital assets.

INFO 225 is not, and is not intended to be, an exhaustive discussion of:

- all the relevant Australian laws, regulations, ASIC guidance or ASIC relief about financial products and services
- how digital assets and any related products, however structured, fit into the existing financial services regime, or
- your legal and regulatory obligations.

It is your responsibility to ensure you understand and comply with all relevant and applicable Australian laws and regulatory requirements.

Note: The scope of what is and is not a financial product differs slightly between the Corporations Act and the ASIC Act.

Links to other supporting documents are included throughout INFO 225. Guidance in INFO 225 should be read together with that broader material.

The hypothetical worked examples in INFO 225 are not exhaustive. They are designed to help you think about these issues, but each product needs to be assessed on its own facts and circumstances. In the examples, we indicate whether the digital asset or related product is likely or unlikely to be a financial product and, if so, which financial product. Any given digital asset or related product could potentially meet more than one financial product definition in the Corporations Act (e.g. a digital asset could potentially meet the definitions of both a debenture and a non-cash payment facility).

The digital assets sector is rapidly evolving. INFO 225 is based on current law. As at the date of this update (XXXX 2025), the Government is considering amendments to the legislative settings for some digital asset service providers (PDF 926 KB), as well as for payment service providers. Anti-money laundering reforms relating to the digital assets sector also recently passed both Houses of Parliament. This information sheet may be updated in due course to reflect these developments.

This information sheet now uses the term 'digital assets' (it previously referred to 'crypto-assets'). However, it is intended to apply to a wide range of digital and crypto-assets, whether described as digital assets, crypto-assets, virtual assets, tokenised assets, tokens or coins.

INFO 225 also refers to the Australian Consumer Law. However, it does not cover Australian legislation administered by other regulators who oversee digital assets and digital asset service providers, such as the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Taxation Office (ATO) and the Reserve Bank of Australia (RBA).

Consumers should read information and warnings about crypto-assets on our MoneySmart website. You are only protected by the financial services laws ASIC administers to the extent that the digital asset and related services are subject to those laws. If you invest in something that is unlicensed and unregulated in Australia, it is harder to get help if things go wrong.

This information sheet addresses the following questions:

- Part A: When could a digital asset be or involve a financial product?
- Part B: When are you providing a financial service in relation to digital assets or related products?
- Part C: What else should you consider when offering a financial product and financial service?
- Part D: When could a digital asset exchange become financial market infrastructure?
- Part E: What should you consider when offering retail investors exposure to digital assets via a regulated investment vehicle?
- Part F: Where can I get more information?

For a discussion of distributed ledger technology see Information Sheet 219 *Evaluating distributed ledger technology* (INFO 219).

The use of offshore or decentralised structures does not mean that key obligations under Australian laws do not apply or can be ignored (see Regulatory Guide 121 *Doing financial services business in Australia* (RG 121)). Australian laws apply where the digital asset is promoted or sold in Australia, including from offshore. We encourage entities to use their innovative technology to build their products and services in a way that complies with the intention of the laws in place to safeguard consumers and the integrity of financial markets in Australia.

Note: INFO 225 does not comment on when someone in a 'decentralised finance' (or DeFi) arrangement may require a licence, or what might be considered 'true DeFi'. Whether a person needs a licence in these circumstances is dependent on the individual facts of each DeFi arrangement and the person's role and offering in the arrangement.

Part A: When could a digital asset be or involve a financial product?

Entities and their advisers need to consider all the rights and benefits attached to the digital asset, as well as the rights and benefits attached to the arrangements provided in connection with the digital asset. This includes the way in which the products will be offered and used in practice. This analysis is critical to determining whether the digital asset, and/or arrangement related to the digital asset, is a financial product.

Our experience suggests that many people seek to raise money from the public or privately to fund a particular project (e.g. an enterprise) by issuing digital assets. If the digital asset, or a related product, is a financial product, the issuer will need to comply with the relevant provisions of the Corporations Act, such as Australian financial services (AFS) licensing requirements and/or other regulatory requirements. These regulatory requirements are in place to maintain the integrity of Australia's financial markets and to protect consumers and investors.

If you are operating without a licence or without being an authorised representative of a licensee, you should be prepared to substantiate and justify why the digital asset(s) or related products or arrangements are not a regulated financial product (and why you are not undertaking a financial service or operating a market or clearing and settlement facility that requires a licence – see Part B and Part D). You should be able to justify this in relation to all aspects of your offering. For example, a project may in some circumstances feature multiple types of digital assets and involve one or more arrangements which may need to be assessed individually and then in combination.

This section considers types of digital assets made available to consumers in Australia and whether the Corporations Act might apply to them as various types of financial products. It addresses the following questions:

- When could a digital asset, or product involving digital assets, be:
  - a facility for making a financial investment?
  - interests in a managed investment scheme ('scheme')?
  - an offer of a security (e.g. a share or a debenture)?
  - a derivative?
  - a non-cash payment facility?

Even where a digital asset, when sold by itself, may not be a financial product, when bundled together with one or more other products or services, there may be a financial product offered. Where it is reasonable to assume that the relevant parties treat two or more arrangements as a single arrangement, the Corporations Act treats it as a single arrangement (section 761B of the Corporations Act). This would also mean that a person giving advice on or dealing in that aggregated arrangement would be providing a financial service (see Part B).

For example, a digital asset that is capable of being used to generate a return as part of a staking arrangement (whether this is part of securing a blockchain or participating in certain governance arrangements) might not be a financial product of itself. However, if some of that digital asset was bundled with a service of also running the staking arrangement (e.g. a node) on behalf of the customer, the bundled arrangement may be a financial product (a facility for making an investment) and the seller of the bundled arrangement may be dealing in a financial product.

Rights and benefits attached to digital assets

The rights and benefits attached to digital assets, or products involving digital assets, are a key consideration in assessing the legal status of those digital assets and products as a financial product. These rights and benefits can be described in a 'white paper', a document issued by the business making the offer or sale of the digital asset. Rights and benefits may also be determined from other circumstances (e.g. by how the digital asset is marketed to potential clients, advertising materials, communications with clients and other documentation which sets out legal rights and benefits attached to a digital asset and its related arrangements).

What is a 'right' should be interpreted broadly. Rights that may arise in the future or on a contingency, and rights that are not legally enforceable are included.

The rights and benefits may change over time with changes in the features or uses of the digital asset, how common use of the digital asset evolves (see discussion below related to a facility for making a financial investment), and any changes to the marketing of the digital asset.

For convenience, in some places this information sheet refers to whether particular digital asset 'tokens' are likely to be a financial product. This is a short-hand expression – what we are in fact referring to is the bundle of rights, benefits, expectations and product features that are associated with a particular token as offered to the public. Some of the rights and benefits are enforceable, others are more in the nature of a statement about the intentions of the offeror, and others are more a consequence of the code used in the smart contracts associated with the digital asset. When we refer to the legal status of a 'token' it should generally be understood as a reference to the legal status of the overall arrangement that includes the token as offered to the public. This means that a 'token' is not separated from its associated bundle of rights, benefits, expectations and features for the purpose of being traded on a digital asset or crypto platform. Generally, we understand that when you trade a 'token' you are transferring the rights associated with that token, in the same way as trading shares transfers the rights associated with those shares.

When could a digital asset be, or involve, a facility for making a financial investment?

What is a facility for making a financial investment?

A facility through which, or through the acquisition of which, a person makes a financial investment is a financial product under the Corporations Act (section 763A and 763B). The key elements are that:

- the client gives money or money's worth to another person and any (or all) of the following apply:
  - the other person uses the contribution to generate a financial return, or other benefit, for the client,
  - the client intends that the other person will use the contribution to generate a financial return, or other benefit, for the client (even if no return or benefit is in fact generated), and/or
  - the other person intends that the contribution will be used to generate a financial return, or other benefit, for the client (even if no return or benefit is in fact generated), and
- the client has no day-to-day control over the use of the contribution to generate the return or benefit.

To note on this definition:

- 'money's worth' is a broad concept that includes a wide range of potential types of contributions
- the ability to withdraw from a facility or vote on matters is not sufficient for a person to be considered as having day-to-day control of the use of the funds
- it looks at how the facility is 'commonly' used by people that acquire the product, even if a specific person acquired the product for some other purpose
- a facility does not cease to be a financial product merely because it was acquired by a person other than the person to whom the product was originally issued, and that person who acquired the product is not making a financial investment.

Application to digital assets

Often the price or value of a digital asset is directly or indirectly linked to the success of a business or project (an enterprise). This is particularly the case where digital assets are expressly issued as a way to raise funds for a particular enterprise, with the funds to be used in that enterprise.

As noted above, rights and benefits attached to or associated with the digital asset should be interpreted broadly, and can extend beyond the standard terms and conditions and initial disclosures (such as in a 'white paper').

Some digital asset projects involve a buy-back or other benefits so that the holders may receive a return if the enterprise is a success. Others involve a right to receive discounts or other promotions linked to the enterprise. Other initiatives give an expectation of capital gains from the increase in the value of the digital asset if the enterprise or project funded by the digital asset is successful.

Example 1

Company A runs a digital asset exchange. They issue a digital asset where the relevant 'white paper' outlines it is to raise funds to assist in the development of the exchange. The token was marketed as a way of contributing to, supporting and potentially obtaining a financial return, or other benefit, by 'investing in' the project, and at least some consumers bought the tokens on that basis.

The token's price on the exchange (and on any other exchange) was expected to and does go up and down based on the perceived success of, and general sentiment towards, Company A's exchange.

The white paper stated that Company A intends to (but is not obliged to) buy back the tokens at a certain price if Company A's exchange achieves certain success metrics (e.g. based on revenue, trading volume and profit).

Company A's digital asset is likely to be a facility for making a financial investment. It involves members of the public contributing money or money's worth which is used in a business project where both the business and the investors intend the money to be used to generate a financial return (e.g. the token increases in value and the token is intended to be bought back by the exchange if the project is successful). The investors do not have day-to-day control over how the funds are used (even if there is a voting mechanism to consider certain matters).

Example 2

Company B runs a digital asset exchange. It offers its customers the ability to 'natively stake' certain native digital assets to support verification of blockchain transactions, where the blockchain uses a 'proof of stake' consensus mechanism.

Company B markets its staking services as a way of earning a return on otherwise idle digital assets. Company B takes a small share of the staking revenue as a fee for providing the services. For all digital assets made available to stake, Company B allows customers to stake with no minimum balance, withdraw their staked assets instantaneously, and participate in staking at any time. However, the underlying processes for staking on the relevant blockchains have restrictions, such as:

- a minimum staking balance
- the digital assets must be locked for a minimum period of time, or there is an inbuilt delay in returning unstaked assets, and
- limits on the number of individuals who can participate in staking at one time.

Company B's facilities for staking these digital assets are likely to be facilities for making a financial investment (and potentially managed investment schemes). This is because in each staking facility there is a contribution of money's worth (being the digital asset) which is pooled or used in a common enterprise by Company B to generate a financial return or other benefit for the investor, and the investors do not have day-to-day control of the facilities. In each facility, the rights and benefits from Company B's facility differ from and exceed what the client would get if they undertook to stake the digital assets without the services of Company B. For example, Company B's facilities allow clients to stake digital asset balances below the minimum for that particular blockchain.

Example 3

An online gaming company, Company C, develops a game that uses a public blockchain to store and record ownership of in-game items that can be purchased (with digital assets or fiat currency) or received by playing the game. These are marketed as limited edition or unique items, that are both collectables and can be used in the game. These non-fungible tokens (NFTs) are used as 'skins' to change the appearance of in-game characters or items used by such characters for in-game play.

The NFTs are first sold, or received over time through success in playing the game, to players by Company C. The NFTs are also tradeable on secondary markets and the prices of the NFTs can change based on buyer and seller interest. Company C does not make any comments or representation in their white paper or marketing materials that the contribution used to buy the NFTs will be used to generate a financial return, or other benefit, for the player (other than the utility of playing the game) or that the NFTs should be bought because of an expectation that the prices will increase.

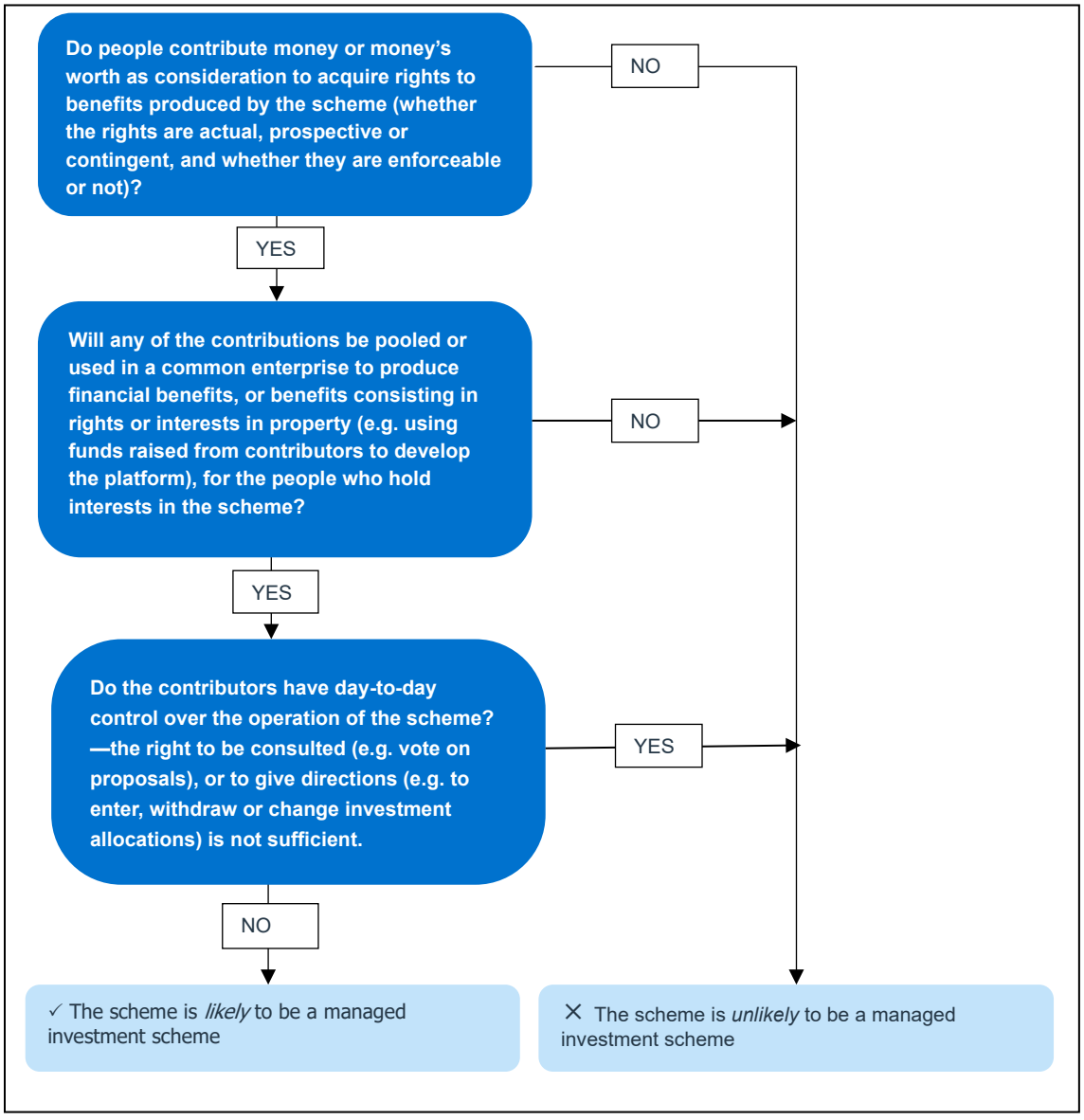
The NFTs are unlikely to be a facility for making a financial investment because the contributions are not, nor are they intended to be, used to generate a financial return, or other benefit for the customer. There is also no suggestion that the customer intended their contribution to be used for that purpose, even if some bought an NFT for speculative purposes.

When could a digital asset be, or involve, interests in a managed investment scheme?

What is a managed investment scheme?

A managed investment scheme is a form of collective investment vehicle. It is defined in the Corporations Act and has three elements, as summarised in Figure 1.

Figure 1: Is the digital asset an interest in a managed investment scheme?



Typically, in Australia, traditional managed investment schemes (sometimes called managed funds) operate with a trust structure to hold the assets contributed by the investors (or purchased using those contributions). However, a trust structure is not required for the arrangement to be a managed investment scheme (some schemes are enterprise or contract-based schemes).

Application to digital assets

As noted above, 'rights' and 'benefits' should be interpreted broadly. If the digital asset represents an interest in a scheme with the three elements described above, the digital asset issuer is likely to be offering interests in a managed investment scheme. This is the case whether or not the digital asset is marketed as an investment.

In some cases, digital asset issuers may frame the entitlements received by contributors as a receipt for a pre-purchased service (e.g. lower trading fees, computer storage services). Whether such an arrangement may be a managed investment scheme depends on the specific facts.

Example 4

Company D issues a digital asset which is marketed as a yield-bearing stablecoin. They state that the digital asset token is expected to maintain a stable price and value in Australian dollars (AUD). Company D uses the funds raised from the sale of the token to purchase a range of bank deposits and Commonwealth Government Securities, and holds these assets on trust. Holders of the token have a right to redeem their tokens for Australian dollars.

Company D states that the stable value of the token will be achieved by linking the token to assets held in the trust. The token is marketed as a 'yield-bearing stablecoin' that earns 'yield' through holders receiving new tokens over time based on the returns generated from the trust assets. New tokens are issued to existing holders based on the returns generated from the underlying assets (less the fees and costs of running the fund), providing a financial return to holders.

A large number of investors buy the token because of the proposition of a stable value and that it also offers a return. These tokens are a useful way to 'hold funds' while waiting to make other digital asset investments, and also as a way to settle digital asset transactions or participate in decentralised finance arrangements.

Company D's digital asset is likely to be an interest in a managed investment scheme. Investors receive a token for contributing money or money's worth, that contribution is pooled together and the investors do not have day-to-day control over the operation of the scheme. The funds contributed generate several benefits, which can be financial benefits and benefits consisting of rights or interests in property. For example, a token that is stable in value and is able to be used for making payments has benefits over other tokens that have highly volatile prices.

Example 5

Company E issues a gold-linked digital asset token. They promote the token as having a price that is linked to the price of gold. In practice, the price of the tokens in the secondary market does seem to generally track the price of gold.

Company E uses the money raised from token sales to purchase spot gold and other gold-related investments (e.g. financial products such as gold-related futures and options), and holds them in a trust. Each token represents an interest in the trust holding the gold or gold-related assets.

Company E's digital asset token is likely to be an interest in a managed investment scheme. Investors contribute money which is pooled to purchase gold and gold-related assets. While the gold-linked token may not generate cash flow, it has the potential for capital gains based on changes to the value of the underlying gold assets, which is a financial benefit. Investors also do not have day-to-day control over the use of the funds.

Example 6

Company F runs a business selling books to the general public. They offer a membership program to customers that, for a fee, gives the customer access to member-only events and discounts. Membership is recorded on a public blockchain, through ownership of an NFT. The tokens are tradeable.

The digital asset token issued by Company F is unlikely to be a managed investment scheme. While Company F uses the money or money's worth raised from selling the memberships for its business, the contributions are not used to generate financial benefits for the members.

Example 7

Company G operates a lawn mowing business. It has issued digital assets to pre-sell their services to grow their business. A holder of one token is entitled to have one square metre of grass mown on one occasion. The tokens are tradeable.

Company G undertook an initial token sale to distribute the tokens. There is currently a fixed supply of tokens, and Company F has made representations that they will not issue any further tokens. In issuing the tokens to the public, Company F outlined that they intend the proceeds from the token sale to fund the development of the business.

While the tokens are tradeable and the price can fluctuate, each token remains redeemable for the same amount of future service. The fluctuations in the token's price could be attributable to the popularity of the service as the business grows and the number of similar competing businesses in the locality.

The digital asset issued by Company G is unlikely to be a managed investment scheme. While Company G uses the money's worth raised for its business, the contributions are not used to generate financial benefits for the members (i.e. the benefits for holders attributable to each token are largely fixed).

Example 8

Company H is seeking to establish a new blockchain. They issue an initial token (H1) to raise funds from supporters. H1 is intended to be time-limited, and supporters receive one H1 token per AUD of value contributed, whether they provide fiat currency or digital assets.

In the white paper, Company H states that when the new blockchain is operational, H1 tokens will be cancelled and holders will be given new tokens (H2) equal to the number of H1 tokens they hold. Company H intends the new H2 tokens to have ongoing use in the new blockchain ecosystem (e.g. to pay transaction fees) and they will be tradeable. The H2 tokens are expected by the social media followers of the project to begin trading at more than $1 per token.

After 12 months, the blockchain launched. The H1 tokens were cancelled and holders were given H2 tokens as promised. On initial launch, additional H2 tokens were available to the general public for purchase for $2 each from Company H's treasury. The process for operating the blockchain also means new H2 tokens are issued over time as people contribute effort and work to process transactions and secure the network. The H2 tokens are popular and increase in value over time (due to Company H's ongoing development of new functionality).

The initial fundraising involving the H1 tokens is likely to be a managed investment scheme. Initial supporters contributed money or money's worth which was pooled by Company H to be used in the common enterprise of developing the blockchain enterprise. Contributors did not have day-to-day control of the enterprise and expected to receive valuable benefits at the end (the H2 tokens).

Whether or not the new H2 token is a managed investment scheme would depend on whether money or money's worth contributed to acquire the H2 token (whether from the return of the H1 tokens from the initial fundraising, later purchases or otherwise) is pooled or used in a common enterprise to be used to generate a financial benefit to holders of the H2 token, where the holders of the H2 token do not have day-to-day control of the enterprise.

Australian laws apply

If an issuer of a digital asset or a product involving digital assets is operating a managed investment scheme offered to retail investors, it will likely need to hold an AFS licence authorising it to act as a responsible entity, comply with the AFS licence obligations and comply with some additional obligations applying to responsible entities.

If a person issues a digital asset or a product involving digital assets and is operating a *wholesale* managed investment scheme they may need to obtain an AFS licence with the correct authorisations and must have an appropriate process to ensure that only wholesale clients invest in the managed investment scheme. For guidance on licensing arrangements for issuers of wholesale managed investment schemes, see Information Sheet 251 *AFS licensing requirement for trustees of unregistered managed investment schemes* (INFO 251).

Part D includes more information about good practices for managed investment schemes offering exposure to digital assets, such as custody, registration and disclosure.

- More about managed investment schemes

When could a digital asset be, or involve, an offer of a security?

What is a security?

The most common type of security is a share. An option to acquire a share by way of issue is considered to be a 'security' under the Corporations Act. A share is a collection of rights relating to a company. There are a range of types of shares that may be issued. Most shares issued by companies that offer shares to the public are 'ordinary shares' and carry rights regarding the ownership of the company, voting rights in the decisions of the body, some entitlement to share in future profits through dividends, and a claim on the residual assets of the company if it is wound up.

Most shares issued in Australia come with the benefit to shareholders of limited liability as well.

- More about shares

A debenture is also a 'security' under the Corporations Act. Debentures are a way for businesses to raise money from investors. The business issuing the debenture promises to repay the investor the money deposited with or lent to the business, usually with interest, at a future date. Debentures may be secured or unsecured.

- More about debentures

Application to digital assets and ICOs

When an initial coin offering (ICO) is undertaken to fund a company (or to fund an undertaking that looks like a company) then the rights attached to the issued digital asset may fall within the definition of a security – which includes a share or the option to acquire a share in the future, or a debenture – or an interest in a managed investment scheme.

In 2017–2018, ICOs were an important process for primary market sales of digital assets. The process looks similar to an initial public offering (IPO) or crowd-funding sale. Other approaches to sales and distribution of digital assets have evolved.

The bundle of rights and benefits referred to above may help determine if a digital asset sold during one of these approaches is a security (or an interest in a managed investment scheme). If the rights attached to the digital asset (which are generally found in the 'white paper' for the digital asset, but may be found in other materials) are similar to rights commonly attached to a share – such as an ownership interest in the body, voting rights in decisions of the body or some right to participate in profits of the body – then it is likely that the digital asset is a share. If the digital asset gives the purchaser a right to acquire shares in the company at a time in the future (e.g. if it lists on a licensed market) then this may be an option.

Example 9

A private individual (Ms I) issues a 'meme coin' token named after a well-known historical figure. The money collected is not used in Ms I's business or for any other commercial enterprise. The coin does not provide holders with any rights. While the price of the coin goes up and down, it is not connected with the success or otherwise of Ms I's (or anyone else's) business. Ms I's coin is not affiliated with any particular blockchain or digital asset exchange and is not promoted as a method of making payments or pay transaction fees.

Ms I's coin is unlikely to be a security or any other type of financial product, such as a facility for making a financial investment. While it does involve the potential for capital gain (a type of financial return), there does not appear to be a sufficient connection between the use of initial funds raised and any potential capital gain, nor does any potential capital gain appear to be linked to the efforts of the issuer.

Example 10

Company J issues a tokenised concert ticket. The holder of the token is entitled to general admission seating to a major upcoming concert event in Sydney. The token is transferable and whoever holds the token at the time of the concert is able to enter the venue. The price of the token does increase somewhat in the lead up to the event, which is sold out. The token is not able to be used to make payments generally and it does not carry any other entitlements.

Company J's concert token is unlikely to be a security or any other type of financial product, such as a facility for making a financial investment. While it does involve the potential for capital gain (a type of financial return), there does not appear to be a sufficient connection between the use of initial funds raised and any potential capital gain, nor does any potential capital gain appear to be linked to the efforts of the issuer.

Example 11

Company K provides the service of helping corporate entities issue corporate bonds (debentures) on a blockchain. This 'tokenisation' involves a range of processes that means the blockchain records the holdings of the bond. The bonds have the typical features of a traditional bond, such as a promise to repay principal and to pay interest. The tokenisation does not result in fractionalisation of the bonds.

The tokenised bonds issued are likely to be a debenture (and, therefore, a security). Whether or not Company K requires a licence from ASIC will depend on the range of services they offer (e.g. whether they deal, make a market or operate a market in the tokenised bonds – see Part B and Part D).

Australian laws apply

Where it appears that an issuer of a digital asset is offering a security, the issuer will generally need to prepare a prospectus if the offering is to retail investors.

By law, a prospectus must contain all information that consumers reasonably require to make an informed investment decision. Generally, a prospectus should include audited financial information.

Where an offer document is, or should have been, a prospectus and that document does not contain all the information required by the Corporations Act, or includes misleading or deceptive statements, consumers may be able to withdraw their investment before the securities are issued or pursue the issuer and those involved in the sale of the security for the loss.

For more details about the information a prospectus should contain see Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228).

If the digital asset offering is, or involves, a debenture and is sold to retail investors, further obligations apply under Chapter 2L of the Corporations Act. There is also specific guidance for disclosures to retail investors (see Regulatory Guide 69 *Debentures and notes: Improving disclosures for retail investors* (RG 69)).

When could a digital asset be, or involve, a derivative?

What is a derivative?

Section 761D of the Corporations Act provides a broad definition of a derivative. It is an arrangement which satisfies the following conditions:

- under the arrangement, a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind or kinds to someone, and
- that future time is not less than the number of days, prescribed by regulations for this purpose, after the day on which the arrangement is entered into, and
- the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of something else.

The definition in section 761D also includes a non-exhaustive list of examples of what the 'something else' may be. It could be, for example, a share, a share price index, a bond, a bond price index, a pair of currencies, a commodity, a basket of commodities, a digital asset or a digital asset index. 'Consideration' could be the delivery of other financial products.

The statutory definition of a derivative in section 761D includes some exceptions, such as:

- certain deferred sales of tangible property (section 761(3)(a))
- a 'contract for the future provision of services' (section 761(3)(b)),

that also need to be assessed in understanding if the digital asset or related product is a derivative.

Application to digital assets

A digital asset or arrangement related to digital assets may be, or involve, a derivative if it is priced based on, or referenced to, factors such as the price of another financial product, underlying market index or asset price moving in a certain direction before a time or event which resulted in a future payment by one party to the arrangement being required as part of the rights or obligations attached to the digital asset.

Some examples of digital assets or related products that might be derivatives include:

- digital assets where the price references a 'real-world' asset (i.e. assets that are not 'crypto native'; whether or not that asset is a financial product, such as gold or real estate) – this can include some digital assets such as some 'algorithmic stablecoins'
- wrapped digital assets, which are digital assets where the price is derived from another digital asset – this can include wrapping between blockchains (i.e. between 'Layer 1s'), and some processes to represent a digital asset on what are called 'Layer 2s'
- contracts for difference (CFDs), options, forwards or futures that reference one or more digital assets, including perpetual futures.

The price of the digital asset does not have to precisely match the price of the underlying to be a derivative.

Example 12

Company L offers contracts that allow a client to speculate in the change in value of an underlying digital asset (with or without leveraged returns). Clients do not actually acquire an interest in the underlying digital asset but they can make or lose money depending on whether the price of the underlying digital asset goes up or down.

The contracts offered are likely to be derivatives.

Australian laws apply

Where an issuer of a digital asset, or related product involving digital assets, is making an offer of a derivative they need to have an AFS licence with appropriate authorisations to issue that product (unless an exemption applies). Where a person provides other financial services in relation to derivatives such as arranging or advising, then they need to have an AFS licence with appropriate authorisations to provide those services (see Part B).

Over-the-counter (OTC) transactions of derivatives, such as CFDs in digital assets and digital assets that are derivatives, by AFS licensees and other 'reporting entities' may be subject to the transaction reporting requirements (see Derivative transaction reporting). Further, each party to a derivative which is not issued on a financial market is taken to be an issuer of it (section 761E(5) of the Corporations Act).

When could a digital asset be, or involve, a non-cash payment facility?

What is a non-cash payment facility?

A person makes a non-cash payment if they make a payment, or cause a payment to be made, otherwise than by the physical delivery of Australian or foreign currency in the form of notes and/or coins. A facility through which, or through the acquisition of which, a person makes (or can make) non-cash payments to more than one person is generally a financial product. The provision of financial services in relation to such facilities generally requires an AFS licence (see Regulatory Guide 185 *Non-cash payment facilities* (RG 185) for further guidance).

Many non-cash payment facilities involve *standing* arrangements where the client can make multiple payments over the course of time using the standing facility (e.g. a debit card account). However, the meaning of 'makes non-cash payments' in the Corporations Act also allows for the possibility of payments being made by passing the *ownership* of a non-cash payment facility from one person (the payer) to another person (the payee). This is an example of a facility 'through the [disposal and] acquisition of which' a person makes a payment, being a type of bearer instrument.

Application to digital assets

The definition in the Corporations Act of when a person makes a non-cash payment is broad enough to cover performing monetary obligations by means other than fiat currencies. It can include payments using, for example, loyalty points or digital assets.

Digital assets designed for use in payments may be a non-cash payment facility in themselves. For example, many tokens are expressly designed to be used for, and are promoted as a means to make, payments between users. They are designed to be used as a store of value and a means of payment, and for this reason are sometimes described as 'electronic cash'.

Some digital assets are used to make payments directly to the issuer or developer of those tokens. However, to the extent that these payments can only be made to 'one person', being the developer or decentralised autonomous organisation (DAO), that digital asset is unlikely to be a non-cash payment facility due to the single payee exemption in section 763D(2)(a)(i) of the Corporations Act.

Whether or not a facility involving digital assets is a non-cash payment facility will depend on the terms and features of the arrangement. If the facility provides the holder with a right or ability to use a digital asset as a form of value to make a payment, it may be a non-cash payment facility.

Digital asset wallets made available to consumers, whether custodial or non-custodial, may be non-cash payment facilities where they are designed to enable users to make direct payments to other users through the digital asset wallet. For example, some digital asset wallets have a 'pay anyone' feature that allows users to transfer digital assets to any other user, even those who do not use the same digital asset wallet service (e.g. by nominating a destination address on a public blockchain).

Example 13

Company M offers a non-custodial digital asset wallet service and issues their own proprietary stablecoin token on a public blockchain. The digital asset wallet service allows a client to instruct Company M to transfer their token to another address or digital asset wallet issued by Company M. The service can also be used to transfer the token to any other address or digital asset wallet that accepts these tokens. Company M markets this service as a convenient way for its clients to make payments to third parties.

Company M's digital asset wallet service itself is likely to be a non-cash payment facility. It is a facility through which clients can and do make payments to third parties, using Company M's token or other tokens, and Company M's marketing promotes the wallet as having that functionality.

Australian laws apply

If you are providing financial services in relation to a non-cash payment facility (e.g. providing advice or dealing), an AFS licence may be needed. For general information on non-cash payment facilities, including the exemptions that can apply, see RG 185, and see Part B on financial services.

How do overseas categorisations of digital assets translate to the Australian context?

A number of international regulators have issued guidance on the application of their securities, payments and financial services laws to digital assets, and have defined the function of a range of digital assets (e.g. security tokens, utility tokens and exchange tokens). These categorisations do not necessarily translate to equivalent products in Australia.

It is important to always consider the particular rights and benefits of an individual digital asset in relation to current Australian law to determine whether it is regulated as a financial product or whether the services you provide are regulated as the provision of financial services in Australia.

The definition of a financial product in Australia is often broader than in other jurisdictions. Similarly, the definition of financial services in Australia can vary compared to other jurisdictions.

It is your responsibility to understand and comply with all relevant and applicable Australian laws in relation to the products and services you provide or propose to provide.

Part B: When are you providing a financial service in relation to digital assets or related products?

What is a financial service?

The Corporations Act outlines a range of 'financial services' that can be provided in relation to a financial product. Entities are generally required to hold an AFS licence to carry on a financial services business in Australia (see AFS Licensing Kit (Regulatory Guides 1 to 3) for

guidance on what ASIC will require if you apply for an AFS licence). This will include demonstrating that your responsible managers are competent to provide those services (see Regulatory Guide 105 *AFS licensing: Organisational competence* (RG 105)), and your controllers, officers and responsible managers are fit and proper (see Information Sheet 240 *AFS licence applications: Providing information for fit and proper people and certain authorisations* (INFO 240)).

Examples of typical financial services include:

- dealing in a financial product—this includes a range of conduct including applying for or acquiring, varying, disposing and underwriting. It also includes issuing a financial product
- providing financial product advice (general and personal advice)
- making a market for a financial product, and
- providing a custodial or depository service.

There are other specific financial services, but these are the core services relevant to most financial products.

You typically will only need to hold an AFS licence if you are carrying on a financial services business in Australia (see RG 121).

Financial services that may apply to digital assets

When does a digital asset service involve advice?

Recommending or stating an opinion about a digital asset, or product involving digital assets, that is a financial product may be financial product advice, where the person stating the opinion intends to influence a person to make a decision in relation to the financial product. This may include making comparisons between two digital assets where at least one of them is a financial product, or making comparisons between a digital asset and a traditional financial product. For example, giving advice about the relative merits of investing in certain digital assets versus certain shares may be financial product advice. See Information Sheet 269 *Discussing financial products and services online* (INFO 269).

When does a digital asset service involve dealing?

Dealing includes buying and selling (whether for yourself or on behalf of another person) and issuing (i.e. creating and making available) a financial product. A person or company issuing a digital asset, or product related to digital assets, that is a financial product will be providing the financial service of issuing. A business buying pre-existing digital assets from, or selling pre-existing digital assets to, clients (consumers or other businesses) will be providing the financial service of dealing.

Arranging for another person to deal in financial products is also a form of dealing. For example, a business that assists people with buying or selling digital assets that are financial products may itself be dealing in financial products (e.g. acting as a broker). However, subject to some exceptions, dealing on your own behalf is not a financial service.

Note: The use of the term 'arranging' in the context of the Corporations Act does not necessarily have the same meaning in other legislative contexts. See Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36).

When does a digital asset service involve market making?

A person generally makes a market when they regularly state prices at which they regularly offer to buy or sell financial products on their own behalf, and others can respond to those offers. This business model is common both for traditional financial products and digital assets. Where some or all of the digital assets are financial products, the market-making business will be providing a financial service.

When does a digital asset service involve custody?

A person provides a custodial and depository service where they hold financial products or a beneficial interest in the financial product on trust for, or on behalf of, their clients. Where this service is provided in relation to digital assets where some or all of them are financial products, the custodial service will be a financial service. The manner in which the assets are held, subject to the terms of the arrangement, is important in understanding if there is a financial service being offered.

Where a person controls the private keys related to an address on a public blockchain, they will likely be providing a custodial and depository service. Offering a 'self-custody' solution, or self-hosted wallet product, is unlikely to amount to providing a custodial and depository service.

See Regulatory Guide 133 *Funds management and custodial services: Holding assets* (RG 133) for more information on the obligations for custodians. The good practice guidance directed to responsible entities in Part E is also relevant for providers of custodial and depository services in relation to digital assets that are financial products.

When and how do you apply for an AFS licence, and what licence authorisations should you seek?

Entities are generally required to hold an AFS licence, or operate as an authorised representative of an AFS licensee, to carry on a financial services business in Australia. You need to have the appropriate authorisations before you undertake the services that require such a licence.

The AFS Licensing Kit (Regulatory Guides 1 to 3) includes guidance on ASIC's licensing assessment policy settings and what licence authorisations you may require. The range and mix of licences you will require will depend on:

- what type of financial products you are providing financial services for, and
- what financial services you are providing.

Some entities may be providing a financial service in Australia but do not require a licence for that service due to exemptions from the Corporations Act. These can differ by product and service type. Please refer to the relevant regulatory guides for the specific financial product and service.

The AFS Licensing Kit and other regulatory guides also provide guidance on how to apply for your licence. This includes what types of documentation and information you will need to provide to demonstrate organisational competence to offer the financial services.

When engaging with the AFS Licensing Kit, you will need to understand which financial product(s) you are applying to provide financial services for. This relates to both the assessment of the digital assets, and any associated arrangements you offer to customers. For example, if a digital asset or related product is a non-cash payment facility, you will select the 'non-cash payment products' product type, and the services that you are intending to provide for that product. We will also consider providing a tailored licence authorisation where the digital asset or related product meets certain criteria.

It is important to note that having an AFS licence does not authorise you to provide any and all financial products and financial services. Rather, you are limited to offering the financial products and financial services that are detailed by the authorisations on your licence.

Where you are providing a financial service in relation to digital assets that are financial products, we may impose some specific additional or altered licence conditions and obligations. The extent of differences with the traditional financial products and services will depend on the product and service applied for.

Part C: What else should you consider when offering a financial product and financial service?

Are you complying with all relevant Australian laws on an ongoing basis?

Entities need to ensure that they comply with all relevant Australian laws. This includes ensuring that all the documents and information they provide to consumers, regardless of the media they use, comply with relevant laws including the Corporations Act, ASIC Act and the Australian Consumer Law, as well as anti-money laundering (AML) and know-your-client (KYC) obligations.

Whether or not a financial product is involved, promoters must always ensure that the marketing and disclosures about digital assets do not involve misleading or deceptive conduct or statements. Entities should seek professional advice (including legal advice) on all the facts and circumstances of the issue or sale of digital assets.

As the design or features of a digital asset can change over the course of the product development life cycle, entities are expected to seek professional advice and ensure ongoing compliance with the law.

What is misleading or deceptive conduct in relation to a digital asset?

Australian law prohibits misleading or deceptive conduct, in trade or commerce, in relation to financial services. This applies whether the digital asset is a financial product or not. Australian laws and regulations that prohibit misleading or deceptive conduct may apply even if a digital asset is issued, traded or sold offshore. It is a serious breach of Australian law to engage in misleading or deceptive conduct.

Care should be taken to ensure that promotional communications about a digital asset do not mislead or deceive consumers and do not contain false information.

It is important to ensure that ongoing disclosures are kept up to date – failure to do so will increase the risk that the information provided about the digital asset could mislead or deceive consumers.

Digital assets that are financial products

For digital assets that are financial products, the ASIC Act and the Corporations Act include prohibitions against misleading or deceptive conduct.

Regulatory Guide 234 *Advertising financial products and services (including credit): Good practice guidance* (RG 234) contains guidance to help businesses comply with their legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct.

Digital assets that are not financial products

For digital assets that are not financial products, the same prohibitions against misleading or deceptive conduct apply under Australian Consumer Law. The Australian Competition and Consumer Commission (ACCC)'s *Advertising and selling guide* provides guidance on how to ensure advertising complies with the Australian Consumer Law.

Are your clients 'retail' investors?

The Corporations Act imposes additional requirements for entities that provide financial services to retail clients. Entities are expected to know who their investors are to justify a conclusion that exemptions under the Corporations Act for 'wholesale' or 'sophisticated' investors versus retail clients apply to their financial services.

Some important additional requirements are:

- additional disclosures through Product Disclosure Statements (PDSs) and financial services guides (FSGs)
- the design and distribution obligations (see below)
- internal and external dispute resolution arrangements, and
- compensation requirements.

There are also some additional requirements for specific types of financial products—for example, see above for responsible entities of registered managed investment schemes.

What is the link with crowd-sourced funding?

Digital assets are sometimes issued as a form of crowd funding for building blockchain, distributed ledger, and other products or services (including funds management).

Crowd funding by selling digital assets in an ICO is not the same as 'crowd-sourced funding' (CSF) regulated under the Corporations Act. Care should be taken to ensure the public is not misled about the application of the CSF laws to an ICO or digital assets issued in that process. There are specific laws for the CSF regime which reduce the regulatory requirements for public fundraising from retail investors while maintaining appropriate investor protection measures.

The laws require providers of CSF services to hold an AFS licence authorising them to provide this service. This is not an exhaustive discussion of all the relevant Australian laws that apply in relation to providing CSF. It is the responsibility of the entities involved to ensure they comply with all relevant Australian laws.

➢ More about the CSF regime

What are the design and distribution obligations?

The design and distribution obligations are intended to help retail consumers obtain appropriate financial products. They require issuers and distributors to have a consumer-centric approach to the design and distribution of financial products. In particular:

- issuers must design financial products that are likely to be consistent with the likely objectives, financial situation and needs of the consumers for whom they are intended – this includes developing a target market determination
- issuers and distributors must take 'reasonable steps' that are reasonably likely to result in financial products reaching retail consumers in the target market defined by the issuer, and
- issuers must monitor consumer outcomes and review products to ensure that retail consumers are receiving products that are likely to be consistent with their likely objectives, financial situation and needs.

➢ More about the design and distribution obligations

What are ASIC's discretionary powers?

ASIC has discretionary powers to grant relief (i.e. by exemption or declaration) from certain legislative provisions. ASIC's approach to granting relief is outlined in Regulatory Guide 51 *Applications for relief* (RG 51).

Relief can be individual or for a class of persons or products.

Generally, we do not have power to grant retrospective relief. To the extent that we can give relief from future consequences of past conduct, our policy is not to do so.

In assessing a relief application, we attempt to weigh the commercial benefit and any net regulatory benefit or detriment that would flow from granting the relief sought on the conditions proposed.

You can also ask us to grant a no-action letter. This is a letter in which we state to a particular person that we do not intend to take regulatory action over a particular state of affairs or particular conduct. It is not, however, a guarantee that ASIC will not take action in the future, nor is it intended to affect the rights of third parties to take action in relation to any contravention. It is not legal advice and may be withdrawn at any time. See Regulatory Guide 108 *No-action letters* (RG 108).

Part D: When could a digital asset exchange become financial market infrastructure?

What is a financial market?

A financial market is a facility through which offers or invitations to acquire or dispose of financial products are regularly made or accepted. Anyone who operates a financial market in Australia must obtain an Australian market licence to do so or otherwise be exempted from the requirement to hold an Australian market licence (see Regulatory Guide 172 *Financial markets: Domestic and overseas operators* (RG 172)).

Where a digital asset is a financial product, then any platform that enables consumers or other persons to make or accept offers to buy (or be issued) or sell these digital assets may involve the operation of a financial market. You need just one financial product trading on your market to mean you are operating a financial market. It is important for you to carefully consider what products you allow for trading.

Depending on the conduct involved, you may not be operating a market – for example, if you are acting as a market maker or broker (i.e. making or accepting offers to buy or sell digital assets that are financial products on your own behalf, or on behalf of one party to the transaction). A person undertaking this type of conduct, for example, would typically be required to hold an AFS licence rather than a market licence (section 767A(2)(a) of the Corporations Act, and see RG 172 and Part B above).

To operate a financial market in Australia, the platform operator will need to hold an Australian market licence unless covered by an exemption (e.g. low volume financial markets). Platform operators must not allow financial products to be traded on their platform without having the appropriate licence as this may amount to a significant breach of the law.

If you operate an overseas platform which does not have an Australian market licence, you must ensure that it does not operate as a financial market in Australia (unless you are exempted from the requirement to hold an Australian market licence). This may require you to take steps to prevent Australian clients from accessing financial products on your platform. These steps include (but are not limited to) removing references and links, placing additional warnings and disclosures on the relevant webpages and apps, screening out Australian clients as part of your KYC processes, and introducing geographically based IP restrictions (geoblocking).

- More about markets

What is a clearing and settlement facility?

A clearing and settlement (CS) facility in the Corporations Act is defined as a facility that provides a regular mechanism for the parties to transactions relating to financial products to meet obligations to each other that arise from entering into a transaction, where the obligations are of a kind prescribed by the regulations. Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* (RG 211) provides details on when you need a CS facility licence or exemption. CS facilities include central counterparties and settlement systems.

ASIC and the RBA are co-regulators of CS facilities in Australia and have separate, but complementary, responsibilities for licensing and supervising licenced CS facilities.

Depending on how transactions in digital assets that are financial products are cleared and/or settled, you may also be operating a CS facility and require a CS facility licence (see RG 211).

Part E: What should you consider when offering retail investors exposure to digital assets via a regulated investment vehicle?

This section provides guidance to issuers of investment products that provide retail investors with exposure to digital assets.

There are many different types of investment vehicles available to retail investors in Australia. The types commonly accessed by investors include:

- exchange traded products (ETPs), such as exchange traded funds (ETFs), and structured products (SPs)
- listed investment companies (LICs)
- listed investment trusts (LITs), and
- unlisted investment funds.

It is important that you are mindful of the specific legal obligations that apply when operating and offering different kinds of investment products. For example, ETFs, LITs and unlisted investment funds are managed investment schemes. Structured products are generally securities or derivatives. Listed investment companies are public companies. Each of these are regulated by ASIC under the Corporations Act, but the regulatory obligations can differ.

In addition, except for unlisted investment funds, these products are typically traded on licensed Australian financial markets. Market operators play an important gatekeeper role in assessing the suitability of products that are admitted to their markets. If you intend to admit your product to a market, the respective market operator will have requirements you must meet.

The subsections below provide information on good practices for different types of investment products that provide exposure to digital assets. Issuers of ETPs that reference digital assets should also refer to the additional good practices specific to digital asset ETPs set out in Information Sheet 230 *Exchange traded products: Admission guidelines* (INFO 230).

While this guidance is primarily directed to entities providing digital asset investment products and services to retail investors, it is also good practice for providers of products to wholesale investors to apply this guidance, with a focus on custody and risk management.

Managed investment schemes

Responsible entities (REs) and retail managed investment schemes are regulated under Chapter 5C of the Corporations Act. REs play a crucial role in ensuring the health of, and confidence in, the financial system. They are entrusted with the funds of their investors and must comply with their legal obligations as REs, including to act in the best interests of members of the scheme.

There are certain key matters that REs must consider when investing the funds of their investors into digital assets, particularly in relation to custody, risk management and disclosure. These key matters are relevant, whether the digital assets are financial products or not.

Custody

The RE of a registered scheme must hold scheme property on trust for members (section 601FC(2) of the Corporations Act). Further obligations in relation to custody are set out in *ASIC Corporations (Asset Holding Standards for Responsible Entities) Instrument 2024/16* . Regulatory guidance in relation to these obligations is set out in RG 133.

Asset holders also need to comply with financial requirements set out in *ASIC Corporations (Financial Requirements for Responsible Entities, IDPS Operators and Corporate Directors of Retail CCIVs) Instrument 2023/647*. Regulatory guidance in relation to these obligations is set out in Regulatory Guide 16 *AFS licensing: Financial requirements* (RG 166). Generally, this will mean that the RE, or its custodian engaged to hold the scheme property, will be required to hold minimum net tangible assets of A$10 million.

In meeting these minimum requirements when dealing with digital assets, we consider it good practice that:

- the entity responsible for custody has specialist expertise and infrastructure relating to digital asset custody
- the digital assets, to the extent that they are not subject to other requirements or exceptions in relation to custodial property, are segregated on the blockchain. This means that unique public and private keys are maintained on behalf of the RE so that the scheme assets are not intermingled with other digital asset holdings
- the private keys used to access the scheme's digital assets are generated and stored in a way that minimises the risk of loss and unauthorised access. For example:
    - solutions that protect private key material using hardware devices that are physically isolated and that have appropriately limited connectivity to other computing systems (cold storage) are preferred. Private key material should not be held on internet-connected systems or networked hardware (hot storage) beyond what is strictly necessary for the operation of the product
    - the hardware devices used to hold private key material should be subject to robust physical security practices, and
    - effective systems and processes for key backup and recovery should be maintained, with geographically distributed backup sites preferred

- signing approaches that minimise 'single point of failure risk' are adopted
- custodians have robust systems and practices for the receipt, validation, review, reporting and execution of instructions from the RE
- REs and custodians have robust cyber and physical security practices for their operations, including appropriate internal governance and controls, and risk management and business continuity practices
- the cybersecurity practices and the controls environment of the custodian are independently verified to an appropriate standard – for example, through SOC 1/2, GS 007, ISO 27001/2, NIST CSF or other appropriate certification or attestation

Note: See System and organisation controls (SOC) reports 1 and 2 (SOC 1/2), Auditing and Assurance Standards Board, Guidance Statement GS 007 *Audit implications of the use of service organisations for investment management services* (GS 007), International Organization for Standardization, ISO/IEC 27001:2013 *Information technology—Security techniques—Information security management systems—Requirements* (ISO 27001), ISO/IEC 27002:2013 *Information technology—Security techniques—Code of practice for information security controls* (ISO 27002), and ISO/TR 23576:2020 *Blockchain and distributed ledger technologies – security management of digital asset custodians* and National Institute of Standards and Technology, Cybersecurity Framework (NIST CSF).

- REs have access to an appropriate compensation system in the event that digital assets held in custody are lost, and
- if an external or sub-custodian is used, REs should have the appropriate competencies to assess the custodian's compliance with RG 133.

The security of private keys is of critical importance. Private keys are necessary to sign transactions that transfer digital assets to new addresses. If private keys are compromised, unauthorised parties can use them to transfer the scheme's digital assets to addresses (and parties) that are outside the control of the RE.

Accordingly, REs and custodians should ensure that the private keys used by the scheme are protected from unauthorised access – both online and offline.

For the same reasons, REs and custodians should adopt a transaction signing approach that minimises single point of failure risk. For example, multi-signature or sharding-based signing approaches should be preferred to the use of a single private key to sign transactions. As technology develops, other suitable approaches may also emerge. It is a matter for the RE to determine the most effective approach, considering the benefits and drawbacks of different approaches.

In relation to the receipt, validation, review and execution of customer instructions, these processes should include appropriate permissioning so that no one party has control of the entire process. If the structure of the product is such that it only needs to interact with a pre-defined set of addresses – for example, particular dealers, markets or authorised participants – the custodian should consider a whitelist approach, so that transfers can only be made to those pre-defined addresses.

In relation to compensation systems, we consider it good practice that REs have access to an arrangement so that members of the scheme can be compensated if digital assets are lost. The precise nature of the arrangement, including what is covered, how much is

covered, and its form – for example, insurance, an asset protection plan or compensation fund – are all matters for the RE to determine, taking into account the nature of its product and its duty to act in the best interest of the members of the scheme.

Note: In this context, REs should also consider the regulatory guidance on liability provisions in custody agreements set out in RG 133.

In relation to the independent verification of cybersecurity practices and controls environments, we have not mandated specific standards, certifications or attestations that must be achieved by custodians of digital assets. Rather, we consider it good practice that these are independently verified to an appropriate standard, as determined by industry practice, and it is a matter for the RE as to whether they are satisfied with the standards, certifications or attestations that the custodian has achieved.

REs should, where appropriate, take the necessary steps to obtain a copy and consider an independent audit of the effectiveness of the controls of a third-party service organisation responsible for custody of assets. Where digital assets are held it is expected this would include controls determined by industry practice for mandated standards, certifications or attestations that are expected for custodians of digital assets. This could be an audit based on GS 007 or a comparable audit from other jurisdictions.

Note: As set out in RG 133, a responsible entity or another person engaged by it to hold assets of a registered scheme does not need to hold an AFS licence authorising it to provide a custodial service for this purpose. This is because holding those assets is not a custodial service under section 766E(3)(b) of the Corporations Act. Holding assets is a part of the operation of the registered scheme by the RE.

An RE can also indirectly invest in spot digital assets via an intermediary vehicle, such as a different managed investment scheme. Where this structure is employed, we expect the RE to satisfy themselves that the intermediary vehicle is holding the digital assets in line with the above custody good practices.

Risk management

An RE, as an AFS licensee, is required to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly (section 912A(1)(a) of the Corporations Act). Further, under section 912A(1)(h), an AFS licensee is required to have adequate risk management systems. Regulatory guidance in relation to these obligations is set out in Regulatory Guide 259 *Risk management systems of fund operators* (RG 259).

In meeting these minimum requirements in relation to digital assets, we consider it good practice for REs to carefully consider the digital asset exchanges used by them or their service providers to access digital assets. In particular:

- the RE should be satisfied, based on reasonable due diligence, that any digital asset exchange it relies on:
    - is a digital currency exchange (DCE) provider registered with AUSTRAC, if required, or is regulated by one or more laws of a foreign country giving effect to the Financial Action Task Force recommendations relating to customer due diligence and record-keeping, and

  - implements risk-based anti-money laundering and counter-terrorism financing (AML/CTF) systems and controls that are supervised or monitored by a body empowered by law to supervise and enforce the customer due diligence and record-keeping obligations, and

- the RE should ensure that authorised participants, market makers and other service providers that trade digital assets in connection with the product do so on digital asset exchanges that meet the same standard as above.

The AML/CTF obligations, among other things, require entities to have customer identification procedures and aim to reduce the risk of digital assets being used to support criminal activity.

Research also suggests that market integrity issues are more prevalent on digital asset markets with lower levels of regulation, compliance and transparency.

The RE is responsible for ensuring its risk management systems appropriately manage all other risks posed by digital assets. Among other things, this could include implementing or applying relevant standards published by Australian and international organisations as they develop.

Disclosure

Part 7.9 of the Corporations Act sets out the obligations that apply to an RE as an issuer of a PDS. Further guidance about disclosure is set out in Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168) and issuers should refer to the 'Good Disclosure Principles' outlined in Section C of RG 168.

Relevantly, section 1013D of the Corporations Act requires that a PDS must include information – about any significant risks associated with holding the product – that a retail client would reasonably require to make a decision whether to buy the financial product.

In the context of investment products that invest in, or provide exposure to, certain digital assets, we consider there must be sufficient information about the characteristics and risks of those digital assets in the PDS. There must also be sufficient information about how the product is intended to operate and how it is expected to generate a return for investors.

Types of matters that may be relevant in meeting these minimum requirements may include:

Characteristics of digital assets

- the technologies that underpin digital assets, such as blockchains, distributed ledger technology, cryptography and others
- how digital assets are created, transferred and destroyed
- how digital assets are valued and traded, including whether the digital assets will be 'staked', and
- how digital assets are held in custody.

Risks of digital assets

- market risk – historically, digital assets have demonstrated that their investment performance can be highly volatile and there is a risk they could have little to no value in the future
- pricing risk – it may be difficult to value some digital assets accurately and reliably for reasons including the nature of their trading, susceptibility to manipulation, and a lack of identifiable fundamentals. Some digital assets may be purely speculative assets
- immutability – most digital assets are built on immutable blockchains, meaning that an incorrect or unauthorised transfer cannot be easily reversed and can only be undone by the recipient agreeing to return the digital assets in a separate transaction
- political, regulatory and legal risk – government and/or regulatory action may affect the value of digital assets held by the scheme
- custody risk – the private keys may be lost or compromised, resulting in digital assets being inaccessible or accessed by unknown third parties without authorisation
- cyber risk – the nature of digital assets may mean they are more susceptible to cyber risks than other asset classes, and
- environmental impact – to the extent that some digital assets have a large environmental impact, this may raise other risks, such as increased regulation or negative market sentiment, which could affect the value of digital assets held by the scheme.

Note: For the avoidance of doubt, this list does not represent mandatory matters for disclosure and should only be regarded as illustrating the types of matters that may be relevant to REs when complying with their disclosure obligations. REs must determine what is appropriate disclosure in the context of the characteristics, operations and risks of their product.

Licensing of scheme operators and registration of schemes

Operators of wholesale schemes that hold digital assets will generally need to hold an AFS licence or be exempt from the requirement to hold a licence. Operators of retail schemes that hold digital assets will need to hold an AFS licence to 'operate a registered scheme' where the investors in that scheme are retail.

For general information about applying for an AFS licence, refer to the AFS Licensing Kit (Regulatory Guides 1 to 3), which provides an overview of the application process and information on supporting proof documents.

We expect that applicants proposing to operate registered schemes that hold digital assets (whether the scheme holds one or more digital assets) will initially apply for 'named scheme' authorisation. This authorises the licensee to operate only the specific digital asset registered scheme(s) named on the licence.

Consistent with RG 105, we expect applicants to operate two named digital asset registered schemes for at least two years before we will consider granting them a broader 'kind scheme' authorisation for digital assets. The 'kind scheme' authorisation allows the licensee to operate multiple digital asset schemes without needing to vary the licence with each new scheme.

When applying for these authorisations, the applicant is required to select what kind(s) of assets the scheme will hold. For registered managed investment schemes that will hold digital assets, the applicant should select:

- for digital assets that are not financial products, the 'crypto-asset' asset kind, or
- for digital assets that are also financial products, the asset kind which corresponds to the digital asset class of financial product – for example, the 'financial assets' or 'derivatives' asset kinds.

To establish the 'crypto-asset' asset kind to administer our licensing functions we have defined 'crypto-asset' as 'a digital representation of value or rights (including rights to property), the ownership of which is evidenced cryptographically and that is held and transferred electronically by:

- a type of distributed ledger technology, or
- another distributed cryptographically verifiable data structure.'

Note 1: This definition is deliberately broad to capture the range of assets that could be held by a managed investment scheme. Without limitation, it is intended to encapsulate the full range of 'digital assets', 'crypto-assets', 'coins,' 'stablecoins' and 'tokens', as those terms are used by the industry.

Note 2: This definition helps us to administer the AFS licensing regime for managed investment schemes and should not be taken as a definition of digital assets or crypto-assets for other purposes.

Note 3: For the purposes of the AFS licensing above we will retain the term 'crypto-asset', even though INFO 225 is now using the broader term 'digital assets'.

In assessing AFS licence applications for the authorisation to operate registered managed investment schemes that hold 'crypto-assets', for both 'named scheme' and 'kind scheme' authorisations, whether the digital assets are financial products or not, some of the key matters that we will consider in detail are:

- whether the nominated responsible managers can demonstrate both the 'operate scheme' and 'assets under management' elements of the organisational competence standards set out in RG 105
- the extent to which the applicant can meet the good practices outlined above for the products they will operate – particularly in relation to custody and risk management, and
- whether the applicant has appropriate human, financial and technological resources.

We also note that:

- we will assess the application under relevant policy and, in relation to digital assets that are also financial products, take into account the considerations that apply to financial products of that type generally
- applications that relate to digital assets are more likely to be novel applications and our experience to date indicates that assessment of those applications may take more time, and

- we will work with businesses to identify the issues to be addressed in the application and will issue additional guidance if we think that doing so may be helpful to industry.

After the operator is licensed, the digital asset scheme(s) it will offer to investors may need to be registered as a managed investment scheme.

For more information about scheme registration, refer to our webpage on how to register a managed investment scheme.

Listed investment companies

Listed investment companies (LICs) are public companies incorporated under the Corporations Act and are subject to the law relating to such companies, including Chapter 2D (directors' duties), Chapter 2M (financial reporting) and section 674 (continuous disclosure). As listed entities, they are also subject to the rules of the market they are listed on. The LIC will appoint an investment manager with an AFS licence but does not generally have its own AFS licence.

We expect LICs that provide investors with a material exposure to digital assets to follow the same good practices for custody, risk management and disclosure as registered managed investment schemes.

We expect market operators to develop rules for LICs that invest a material portion of investors' funds in digital assets so that there is a level playing field between them and digital asset ETPs, particularly in relation to permissible underlying digital assets and pricing frameworks (see INFO 230 for further information).

Structured products

Structured products (SPs) are generally classified as securities or derivatives, and the precise legal obligations of an SP issuer will depend on the type of financial product it issues.

We expect SPs that offer investors exposure to digital assets to follow the same good practices for custody, risk management and disclosure as registered managed investment schemes. As SPs are a subset of ETPs, these products will also be subject to market operator rule frameworks as they apply to ETPs and our expectations for such products (see INFO 230 for further information).

Part F: Where can I get more information?

Entities that have specific requests or questions about a digital asset solution, or in relation to distributed ledger technology, tokenisation or decentralised finance may contact our Innovation Hub or their existing ASIC contact. The Innovation Hub can help by providing tailored guidance to innovative businesses on how to access information and services relevant to them through the ASIC website.

For all inquiries, we strongly encourage entities to carefully consider their proposal and seek professional advice (including legal advice).

We do not provide any advice, assessment or approval of an entity's compliance with the law, including in relation to the business model adopted.

Related information

- ASIC's role and the laws we administer
- AFS licensees
- Fund operators
- Market infrastructure licensees
- Financial services
- Managed funds
- Markets
- ASIC's Innovation Hub
- Cryptocurrencies – ASIC's MoneySmart website

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

This information sheet was updated in [XXXX 2025].