

22 July 2021

Email: [REDACTED]

Australian Securities and Investments Commission

Dear Sir/Madam

CONSULTATION PAPER 343: CRYPTO-ASSETS AS UNDERLYING ASSETS FOR ETPS AND OTHER INVESTMENT PRODUCTS

The Stockbrokers and Financial Advisers Association (SAFAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SAFAA welcomes the opportunity to provide feedback on ASIC *Consultation paper 343: Crypto-assets as underlying assets for ETPs and other investment products* (Consultation Paper).

Detailed comments

Suitability of crypto-assets and identifying features

B1Q1 Do you consider that crypto-asset ETPs should be available to retail investors through licensed Australian markets? Please provide details, including data on investor demand where available.

Our members have experienced increased interest from retail investors for exposure to crypto-assets. SAFAA considers that at the moment there is no suitable mechanism that enables retail clients to invest in crypto-assets as part of a sensible investment strategy as there is currently a lack of regulatory safeguards. As outlined in the Consultation Paper:

- Crypto-assets do not fall within the existing regulatory perimeter of financial products and services and are generally unregulated by ASIC.
- The crypto-asset marketplace is technologically complex, online and global.
- Unscrupulous operators seek to defraud consumers as evidenced by an exponential rise in the number of crypto investment scam reports.

While crypto-assets remain outside the regulatory perimeter of the Corporations Act, financial advisers are unable to advise a retail client to invest in them and satisfy the best interests duty in section 961B. This means that retail clients who wish to gain exposure to crypto-assets are unable to receive financial advice on their investment.

We agree that retail investors wanting exposure to crypto-assets would benefit from being able to access that exposure through a regulated financial market where a regulated investment vehicle holds the crypto-asset. The benefit of ETPs is that they are open-ended investment products that are traded on a financial market, provide

exposure to asset classes and are regulated by ASIC under the Corporations Act. This would provide investors with much needed regulatory safeguards.

However, if crypto-asset ETPs are to be regulated as a financial product they must meet strict guidelines to ensure consumers are protected.

We consider that crypto-asset ETPs should only be available to retail investors through licensed Australian markets if there are clear parameters and appropriate guardrails that provide for robust liquidity, transparency and price discovery.

For more concrete data on consumer demand for crypto-assets we suggest you contact [btc markets](#), a bitcoin and cyber currency exchange.

B1Q2 Do you consider that crypto-asset ETPs should be cleared and settled through licensed Australian clearing and settlement facilities? Please provide details.

SAFAA considers that it is important that the existing system of clearing and settlement is used for crypto-asset ETPs. We see no benefit in establishing a new clearing and settlement service outside of the existing licensed clearing and settlement facilities regime for crypto-asset ETPs.

B1Q3 If you are a clearing participant, would you be willing to clear crypto-asset ETPs? Please provide your reasons.

As a general comment, SAFAA's view is that as long as the crypto-asset ETPs are regulated by ASIC and accepted for admission by the relevant securities market, clearing participants are likely to be willing to clear the ETPs in the usual course.

B1Q4 If you are a trading participant, would you be willing to trade crypto-asset ETPs? Please provide your reasons.

See our answer to B1Q3.

B1Q5 Do you agree with our approach to determining whether certain crypto-assets are appropriate underlying assets for ETPs on Australian markets? If not, why not?

B1Q6 Do you have any suggestions for additions or modifications to the factors in proposal B1? Please provide details.

We agree that the following factors should be the basis for identifying particular crypto-assets that may be appropriate underlying assets for an ETP:

- A high level of institutional support and acceptance of the crypto-asset being used for investment purposes.
- The availability and willingness of service providers (including custodians, fund administrators, market makers and index providers) to support ETPs that invest in, or provide exposure to, the crypto-asset.
- A mature spot market for the crypto-asset.
- A regulated futures market for trading derivatives linked to the crypto-asset.
- The availability of robust and transparent pricing mechanisms for the crypto-asset, both throughout the trading day and to strike a daily net asset valuation (NAV) price.

We make the following additional points:

- Cyber-assets are digital and not physical. If the blockchain that the asset is on is hacked or the security key is stolen the asset can be wiped out. SAFAA considers that an important issue to be taken into account when considering whether a crypto-asset can be considered for an ETP is the custody and security arrangements for the underlying asset.
- To support confidence in the asset, we consider it must be 'pegged' to a viable standard.
- Liquidity will be an important factor for clients and advisers when they are considering investing in the ETP when the underlying asset is as volatile as crypto.

B1Q7 Do you have any suggestions for alternative mechanisms or principles that could achieve a similar outcome to the approach set out in proposal B1? Please provide details.

We consider that price discovery for cyber-asset ETPs is likely to develop over time as the market matures.

B2Q1 Do you agree that a new category of permissible underlying asset ought to be established by market operators for crypto-assets? If not, why not?

SAFAA considers that crypto-assets are a new asset class with higher risks than other asset classes.

Robust and transparent pricing mechanisms

B3Q1 Do you agree with the good practices in proposal B3 with respect to the pricing mechanisms of underlying crypto-assets? If not, why not?

We consider that the following good practices set out in the consultation paper are essential to demonstrate a robust and transparent pricing mechanism for underlying crypto-assets:

- The basis for the pricing mechanism for crypto-assets held by an ETP should be an index published by a widely regarded provider that:
 - reflects a substantial proportion of trading activity in the relevant pair(s), in a representative and unbiased manner
 - is designed to be resistant to manipulation
 - complies with recognised index selection principles such as the International Organisation of Securities Commission principles for financial benchmarks, the EU Benchmarks Regulation or other internationally recognised index selection principles.
- Pricing mechanisms which rely on a single crypto-asset spot market would be unable to achieve robust and transparent pricing.

INFO-230 related guidance

B4Q1 Are there any other good practice expectations in INFO 230 that need to be clarified or modified to accommodate crypto-asset ETPs?

We consider that the relevant securities exchanges should be consulted on this question.

Responsible entity obligations

We have no comment on the questions in this section.

Design and distribution obligations

C4Q1 Are there any aspects of the DDO regime that need to be clarified for investment products that invest in, or provide exposure to, crypto-assets?

Issuers and distributors of ETPs are already subject to onerous obligations under the DDO regime. SAFAA does not consider that additional requirements should be imposed under the DDO regime for crypto-asset ETPs.

Listed investment entities

We have no comment on the questions in this section.

AFS licensing

E1Q1 Do you agree with our proposal to establish a new asset kind that will cover crypto-assets?

E1Q2 Do you consider that crypto-assets may be captured by the existing asset kinds? If so, please explain.


As set out in our answer to B2Q1 we consider that crypto-assets are a new asset class with higher risks than other asset classes. Accordingly, we agree with the proposal to establish a new asset kind that will cover crypto-assets.

E2Q1 Do you agree with our approach to restrict the crypto-assets a registered managed investment scheme is authorised to hold (eg to bitcoin or ether)?

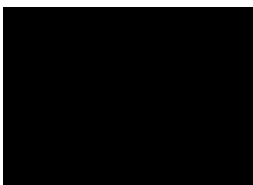
E2 Q2 Do you consider there are any other aspects of the licensing regime that need to be clarified or modified to accommodate investment products that invest in, or provide exposure to, crypto-assets?

While we agree with ASIC's approach to restrict the crypto-assets a registered managed investment scheme is authorised to hold, this approach will need to be subject to review as the market for crypto-assets matures.

Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SAFAA's policy manager, Michelle Huckel, at 

Kind regards



Judith Fox
Chief Executive Officer