

Attachment 2 to CP 392: Draft asset-holding standards instrument



ASIC

Australian Securities &
Investments Commission

ASIC Corporations (Digital Asset Platforms and Tokenised Custody Platforms—Asset-Holding Standards) Instrument 2027/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2027

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

Note: This preliminary draft instrument is prepared for consultation purposes, and the final instrument may change. It implements the *Corporations Amendment (Digital Assets Framework) Act 2026* and relies on regulatory design work that is being developed by Government in parallel to this process. This is intended to enable industry to see a complete picture of the future approach.

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Digital Asset Platforms and Tokenised Custody Platforms—Asset-Holding Standards) Instrument 2027/###>*.

2 Commencement

This instrument commences on the later of:

- (a) the day after it is registered on the Federal Register of Legislation; and
- (b) the day that the *Corporations Amendment (Digital Assets Framework) Act 2026* commences.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under section 912BE of the Corporations Act.

4 Simplified outline of this instrument

[PLACEHOLDER]

5 Scope of the standards

These Standards apply in relation to an operator of a digital asset platform or tokenised custody platform that is a financial services licensee if one or more of the financial services authorised by the licence relate to the issuing of the platform.

Note: The licensee must comply with these Standards to the extent that they relate to those financial services: section 912BB of the Act.

6 Interpretation

- (1) In this instrument:

Act means the *Corporations Act 2001*.

applicable holding arrangement, in relation to an underlying asset, means the legal arrangement under which the underlying asset is held or possessed.

asset-holding functions means functions relating to the following:

- (a) possessing and safeguarding the underlying assets of a digital asset platform or tokenised custody platform;

- (b) recordkeeping, reconciliation and reporting for those underlying assets;
- (c) using those underlying assets;
- (d) providing supplementary services relating to those underlying assets.

digital token identifier means an identifier for a class of digital tokens on a particular distributed ledger, blockchain, public digital token infrastructure or other publicly accessible digital token infrastructure.

held or possessed means, in relation to underlying assets of a digital asset platform or tokenised custody platform:

- (a) in the case of a digital asset platform—possessed (within the meaning of section 761GC of the Act) for or on behalf of another person that is the client under the facility; and
- (b) in the case of a tokenised custody platform—held (within the meaning of section 761GD of the Act) for or on behalf of another person who possesses the digital token for the underlying assets.

Note: In the case of the operator of a platform, underlying assets may be held or possessed by the operator if a person engaged by the operator holds or possesses the underlying assets: paragraphs 761GC(1)(a) and 761GD(1)(c) and subsection 761GE(2) of the Act.

platform means a digital asset platform or a tokenised asset platform.

platform staff member means, in relation to a digital asset platform or tokenised custody platform, an individual employed or otherwise engaged by the operator of the platform who performs duties relating to:

- (a) asset-holding functions; or
- (b) the holding, safeguarding, recordkeeping, reconciliation or reporting of money held under the platform for or on behalf of a client under the platform.

Standards means these asset-holding standards.

sub-custodian means, in relation to a digital asset platform or tokenised custody platform, a custodian of the platform that is appointed as agent, or otherwise engaged, directly or indirectly by another custodian to hold or possess underlying assets.

third-party custodian means, in relation to a digital asset platform or tokenised custody platform, a custodian of the platform that is appointed as agent, or otherwise engaged, directly by the operator of the platform.

Note: A number of expressions used in these Standards are defined in the Act, including the following:

- (a) custodian;

- (b) digital asset platform;
- (c) digital token;
- (d) operator;
- (e) platform rules;
- (f) possession;
- (g) tokenised custody platform.
- (h) underlying asset.

References to operator

- (2) A reference in a provision of these Standards to an operator is a reference to the operator of the digital asset platform or tokenised custody platform in relation to which the provision applies.

Client nominees

- (3) In this instrument:
- (a) a reference to a client under a digital asset platform includes a reference to a nominee of the client, unless the contrary intention appears; and
 - (b) if the operator of a digital asset platform is required to give a disclosure to a client, the operator must give the disclosure to both the client and the nominee of the client if the underlying assets are possessed for or on behalf of a nominee of the client.

Conduct engaged in by other persons

- (4) Subject to subsection (5), if, under a platform, a person other than the operator is authorised to engage in conduct in relation to an underlying asset for or on behalf of a client under the platform, the operator must comply with this instrument as if the conduct were engaged in by the operator.

Note: See subsections 761GC(3) and 761GD(2) of the Act.

- (5) Subsection (4) does not apply to conduct engaged in by:
- (a) a third-party custodian or sub-custodian of the platform in holding or possessing an underlying asset; or
 - (b) the operator of another digital asset platform where that conduct is regulated under the *ASIC Corporations (Digital Asset Platforms—Transactional and Settlement Standards) Instrument 2027/XX*

Part 2—Platform governance and arrangements to ensure compliance

Division 1—Platform governance

7 Platform rules

- (1) Before the operator first holds or possesses an underlying asset, or holds money, for or on behalf of a client under a digital asset platform or tokenised custody platform, the operator of the platform must give the client a copy of all platform rules of the platform that relate to the asset-holding functions of the platform.

Note: An operator may hold or possess an underlying asset as a result of a person engaged by the operator holding or possessing the underlying asset: see the definition of *held or possessed*.

- (2) The operator must notify in writing each person who is a client under the platform of any material change to the platform rules of the platform that affects the asset-holding functions of the platform at least 28 days before the change takes effect.

8 Disclosure of benefits

The operator must disclose on a website that is publicly accessible any material financial or non-financial benefit received by the operator in connection with the asset-holding functions of the platform.

9 Record keeping

- (1) The operator must make and maintain records that enable the operator to demonstrate that it has complied with its obligations under these Standards.
- (2) The operator must retain each record required under these Standards for 7 years after:
 - (a) the record is made; or
 - (b) if the record relates to an arrangement, agreement, policy, procedure or process that continues after the record is made, that matter ceases.
- (3) The operator must ensure that the records required under these Standards are readily accessible and capable of being produced in a legible form, including in the event that the operator becomes insolvent, ceases to operate the platform or is unable to perform its asset-holding functions.

Division 2—Arrangements to ensure compliance

10 Arrangements to ensure compliance

The operator must have and maintain adequate organisational arrangements to ensure compliance with these Standards, including arrangements for the operator to do the following:

- (a) ensure that the following functions are performed by the operator in accordance with these Standards:
 - (i) asset-holding functions; and
 - (ii) where applicable, the holding, safeguarding, recordkeeping, reconciliation and reporting of money held by the operator for or on behalf of a client under the platform;
- (b) identify and manage actual or potential conflicts of interest that could adversely affect the performance of the functions referred to in paragraph (a), including conflicts arising from other functions performed by the operator or a related body corporate;
- (c) minimise the risk that, because of such a conflict, a platform staff member is influenced to act otherwise than in accordance with their duties relating to a function referred to in paragraph (a);
- (d) undertake reasonable checks to identify any attempt to influence a platform staff member in the manner referred to in paragraph (c), take reasonable action in response to the attempt, and make a record of the attempt and the action taken; and
- (e) establish and maintain reporting lines that enable platform staff members to perform their duties properly and to report any attempt referred to in paragraph (c).

11 Capability of platform staff members

- (1) The operator must ensure that each platform staff member:
 - (a) has the knowledge and skills necessary to perform their duties properly; and
 - (b) receives ongoing training and education sufficient to maintain the knowledge and skills referred to in paragraph (a); and
 - (c) has the necessary time and authority to perform those duties properly; and
 - (d) has access to resources to the extent necessary to perform those duties properly

Part 3—Arrangements for underlying assets and money

Division 1—Holding arrangements

12 Permitted holding arrangements

- (1) The operator must ensure that each underlying asset of a digital asset platform or tokenised asset platform it holds or possesses for or on behalf of a person is held or possessed:
 - (a) on trust for the person; or
 - (b) under an arrangement that complies with section 14; or
 - (c) in accordance with Division 3 of Part 7.8 of the Act, if that Division applies to the underlying asset.

Note 1: The person on whose behalf the operator holds or possesses the underlying asset must be:

- (a) in the case of a digital asset platform—a client under the platform; and
- (b) in the case of a tokenised custody platform—the person who possesses the digital token for the underlying asset: see sections 761GC and 761GD of the Act.

Note 2: Section 16 imposes additional requirements if a holding arrangement is governed wholly or partly by the law of a place outside Australia.

Note 3: An operator may hold or possess an underlying asset as a result of a person engaged by the operator holding or possessing the underlying asset: see the definition of *held or possessed*.

- (2) The operator must ensure that:
 - (a) money held under the digital asset platform or tokenised custody platform that is not an underlying asset of the platform is held by the operator:
 - (i) in accordance with Division 2 of Part 7.8 of the Act, if that Division applies to the money; or
 - (ii) otherwise, in trust for, or on behalf of, a client under the platform; and
 - (b) if subparagraph (a)(ii) applies:
 - (i) the money is held through an account or facility that enables the money to be held in trust for, or on behalf of, the client; and
 - (ii) the arrangement under which the money is held in trust is governed by Australian law.

- (3) The operator must make, and keep current, a record of:
 - (a) the legal arrangement under which:
 - (i) each underlying asset is held or possessed; and
 - (ii) money referred to in subsection (2) is held; and
 - (b) if subparagraph (a)(ii) applies:
 - (i) the account or facility through which the money is held; and
 - (ii) how the account or facility enables the money to be held in trust for, or on behalf of, the client; and
 - (iii) the basis on which the operator is satisfied that the arrangement under which the money in trust is held is governed by Australian law.

13 Disclosure of holding arrangements

- (1) In this section, **token holder**, in relation to an underlying asset of a tokenised custody platform, means the person who possesses the digital token for the underlying asset.
- (2) The operator must prepare written disclosure that is clear, concise and effective and includes, for each legal arrangement under which an underlying asset may be held or possessed for or on behalf of a person under the platform, the following information:
 - (a) the circumstances in which the legal arrangement applies;
 - (b) whether, under the legal arrangement, the underlying asset is held or possessed:
 - (i) on trust for the person; or
 - (ii) in another manner which involves the person having a proprietary interest in the underlying asset; or
 - (iii) in a manner which only involves the person having contractual rights in relation to the underlying asset;
 - (c) the nature and extent of any proprietary interests or contractual rights the person has in relation to the underlying asset under the arrangement;
 - (d) any material consequence for the interests or rights of the person in relation to the underlying asset if the operator or a custodian that holds or possess the underlying assets becomes insolvent;

- (e) any other material limitation on, or material risk to, those interests or rights.
- (3) Before the operator first holds or possesses an underlying asset under the platform, the operator must make the disclosure referred to in subsection (2) available on a website that is publicly accessible.
- (4) In addition to complying with subsection (3), the operator must ensure that the disclosure referred to in subsection (2) is:
 - (a) for a digital asset platform given to the client before the operator first possesses (within the meaning of section 761GC) an underlying asset for or on behalf of the client under the platform; and
 - (b) for a tokenised custody platform:
 - (i) given to the client before the operator first holds (within the meaning of section 761GC) an underlying asset for or on behalf of the client under the platform; and
 - (ii) if it is reasonably practicable to do so, given to the token holder:
 - (A) before the operator first holds an underlying asset for or on behalf of the token holder under the platform; or
 - (B) if the operator becomes aware of the token holder's possession of the digital token only after that time, as soon as practicable after becoming so aware.
- (5) Before the operator first holds money for or on behalf of a client under the platform, the operator must give the client written disclosure that is clear, concise and effective and includes the following:
 - (a) details of each arrangement under which the operator may hold money for or on behalf of the client;

Note: The arrangement must be an arrangement under which the money is held:

 - (i) in accordance with Division 2 of Part 7.8 of the Act; or
 - (ii) otherwise, in trust for, or on behalf of, the client: see subsection 12(2).
 - (b) the circumstances in which each arrangement referred to in paragraph (a) applies;
 - (c) if paragraph 13(2)(b) applies:
 - (i) each kind of account or facility through which the money may be held; and
 - (ii) the circumstances in which the money may be held through each kind of account or facility; and

- (iii) how each kind of account or facility enables the money to be held in trust for, or on behalf of, the client; and
 - (iv) any material limitation or risk affecting the client's rights in relation to the money, including any material limitation or risk relating to access to, withdrawal, transfer, availability or recovery of the money.
- (6) If there is a material change to a matter disclosed under subsection (2), the operator must prepare written disclosure of the change that is clear, concise and effective and ensure that the disclosure is:
 - (a) made available on a website that is publicly accessible; and
 - (b) for a digital asset platform—given to each person to whom the operator is required to give disclosure under subsection (4); and
 - (c) for a tokenised custody platform:
 - (i) given to each client; and
 - (ii) if it is reasonably practicable to do so, given to each token holder.
- (7) The disclosure required under subsection (6) must be given or made available:
 - (a) before the change takes effect; or
 - (b) if it is not reasonably practicable to give the disclosure before the change takes effect, as soon as practicable after the change takes effect.
- (8) If there is a material change to a matter disclosed under subsection (5), the operator must give each client written disclosure of the change that is clear, concise and effective:
 - (a) before the change takes effect; or
 - (b) if it is not reasonably practicable to do so before the change takes effect, as soon as practicable afterwards.
- (9) The operator must make a record of:
 - (a) each determination that it was not reasonably practicable to:
 - (i) give the disclosure referred to in subsection (2) to a token holder under subparagraph (4)(b)(ii); or
 - (ii) give disclosure of a material change to an token holder under subparagraph (6)(c)(ii); and

- (b) the basis for each determination referred to in paragraph (a).
- (10) While the operator relies on a determination referred to in subsection (9), the operator must ensure that the record of the determination remains accurate and up to date.

Note: A disclosure required by this section may be included in the platform rules, the DAP/TCP Guide, the terms governing a digital token or another document, provided that the disclosure is given or made available as required by this section.

14 Conditions applying to other holding arrangements

- (1) This section applies in relation to an arrangement referred to in paragraph 12(1)(b).
- (2) The operator must:
 - (a) ensure that the arrangement is legally effective; and
 - (b) take all necessary steps to establish, maintain and protect the proprietary interests and contractual rights the person has in relation to the underlying asset under the arrangement, including any requirements for registration; and
 - (c) ensure that the arrangement, together with the steps referred to in paragraph (b), provides reasonably effective protection for those interests and rights if the operator or a custodian that holds or possesses the underlying asset, becomes insolvent; and
 - (d) ensure that the terms of the arrangement require that:
 - (i) the underlying asset must be held or possessed consistently with the those interests and rights; and
 - (ii) any action in relation to the underlying asset must be taken consistently with those interests and rights; and
 - (e) ensure that the terms of the arrangement do not prevent the operator from complying with these Standards in relation to the underlying asset.

15 Foreign law holding arrangements

- (1) This section applies, in addition to any other section that applies to an underlying asset of a platform, if:
 - (a) the applicable holding arrangement is governed by the law of a place outside Australia; or
 - (b) a law of a place outside Australia materially affects the applicable holding arrangement or an interest or right that the person for or on

behalf of whom the underlying asset is held or possessed has under the arrangement.

- (2) The operator must make a record of:
 - (a) each law referred to in subsection (1);
 - (b) the effect of that law on:
 - (i) the legal effectiveness of the applicable holding arrangement; and
 - (ii) the nature and legal enforceability of each proprietary interest and contractual right that the person for or on behalf of whom the underlying asset is held or possessed has under the arrangement; and
 - (iii) the requirement in paragraph 14(2)(b) to take all necessary steps to establish, maintain and protect each proprietary interest and contractual right; and
 - (iv) the protection of each proprietary interest and contractual right if the operator or a custodian of the platform that holds or possesses the underlying asset becomes insolvent; and
 - (c) the basis for the operator's conclusions about the matters referred to in paragraphs (b).
- (3) If the underlying asset is tangible property, the operator must also make a record of the place in which the underlying asset is located.
- (4) The operator must ensure that each record made under this section remains accurate and up to date.

Division 2—Safeguarding and operational arrangements

16 Identification, safeguarding, segregation and pooling

- (1) The operator must ensure that its records identify:
 - (a) each underlying asset of the platform; and
 - (b) any money that is not an underlying asset and that is held under the platform for or on behalf of a client under the platform; and
 - (c) for each underlying asset:
 - (i) the identity of the person for or on behalf of whom the underlying asset is held or possessed; and

- (ii) the nature and extent of that person's interests or rights in relation to the underlying asset; and
 - (iii) the amount or quantity of the underlying asset held for or on behalf of that person; and
 - (d) for money referred to in paragraph (b):
 - (i) the identity of each client for or on behalf of whom the money is held; and
 - (ii) the nature and extent of that client's interests or rights in relation to the money; and
 - (iii) the amount of money held for or on behalf of the client.
- (2) The operator must ensure that the records referred to in subsection (1);
 - (a) remain accurate and up to date; and
 - (b) are sufficient to enable:
 - (i) the amount or quantity of the underlying assets to be reconciled against the amount or quantity recorded under subparagraph (1)(c)(iii); and
 - (ii) the amount of money referred to in paragraph (1)(b) that is held to be reconciled against the amount recorded under subparagraph (1)(d)(iii); and
 - (iii) any discrepancy to be promptly identified and corrected.
- (3) The operator must have and maintain adequate arrangements to protect the underlying assets and money referred to in subsection (1) from loss, misuse and unauthorised use, transfer or disposal.
- (4) Subject to subsections (5) and (6), the operator must ensure that:
 - (a) each underlying asset referred to in paragraph (1)(a) is held or possessed separately from:
 - (i) property held or possessed on the operator's or any custodian's own account; and
 - (ii) underlying assets held or possessed for or on behalf of any other person under the platform; and
 - (b) money referred to in paragraph (1)(b) is held separately from:
 - (i) money held for the operator's or any custodian's own account; and

- (ii) money held for or on behalf of any other client under the platform.
- (5) Subject to subsection (7), the operator may, under an arrangement:
 - (a) possess, at the same address or other location on public digital token infrastructure or other publicly accessible digital token infrastructure, or in the same wallet, digital tokens that are:
 - (i) underlying assets of the platform; and
 - (ii) held or possessed for or on behalf of different persons under the platform;
 - if the operator's records identify the digital tokens attributable to each person; and
 - (b) hold, in the same account or facility, money for or on behalf of different clients under the platform.
- (6) Subject to subsection (7), the operator does not need to comply with paragraph (4)(a)(ii) in relation to underlying assets that are fungible assets and are not digital tokens.

Note: For example, underlying assets that are gold or shares in a class of shares.

- (7) For each arrangement referred to in subsection (5) or (6), the operator must ensure that:
 - (a) in relation to an arrangement referred to in:
 - (i) paragraph (5)(a), the digital tokens are possessed separately from property held or possessed for the operator's or any custodian's own account; and
 - (ii) paragraph (5)(b), the money is held separately from money or other property held for the operator's or any custodian's own account; and
 - (iii) subsection (6), the underlying assets are held separately from property held or possessed for the operator's or any custodian's own account; and
 - (b) the operator has a written policy setting out why the arrangement is appropriate, having regard to:
 - (i) the nature and extent of the risks arising from the digital tokens, fungible assets or money being held or possessed together; and
 - (ii) the interests and rights of, and the operator's and any custodian's duties to, the persons or clients for or on behalf of

whom the digital tokens, fungible assets or money are held or possessed; and

- (c) at least once every 13 months, the operator reviews the policy and makes a record of the review, its findings and any action taken or proposed; and
- (d) the operator's records:
 - (i) if paragraph (5)(a) applies—identify, for each person, the amount or quantity of each class of digital tokens attributable to the person; and
 - (ii) if paragraph (5)(b) applies—identify, for each client, the amount of money in each currency attributable to the client; and
 - (iii) if subsection (6) applies—identify, for each person, the amount or quantity of each class of fungible assets attributable to the person; and
 - (iv) enable, for each class of digital tokens or fungible assets and each currency (as applicable), the amount or quantity held or possessed under the arrangement to be reconciled against the aggregate amount or quantity recorded under subparagraphs (i), (ii) or (iii), as applicable; and
- (e) the reconciliation referred to in subparagraph (d)(iv) is performed:
 - (i) each business day; or
 - (ii) if it is ordinary and reasonable commercial practice for property of that kind to be reconciled less frequently, at a frequency consistent with that practice; and
- (f) the arrangement does not prevent a properly authorised instruction that a person or client is entitled to give under the platform in relation to digital tokens, fungible assets or money attributable to that person or client from being carried out; and
- (g) if, for any class of digital tokens, fungible assets or currency, the amount or quantity held or possessed under the arrangement is less than the aggregate amount or quantity recorded under subparagraphs (d)(i), (ii) or (iii), as applicable, the operator corrects the deficiency no later than the end of the second business day after it arises.

17 Receiving and acting on instructions

- (1) The operator must have and maintain reasonable procedures for receiving and acting on instructions that:

- (a) a person is entitled to give under the platform in relation to an underlying asset held or possessed for or on behalf of the person;
 - (b) a client is entitled to give under the platform in relation to money held for or on behalf of the client.
- (2) The procedures referred to in subsection (1) must address:
 - (a) how instructions may be given; and
 - (b) how the operator verifies that an instruction is properly authorised; and
 - (c) how a properly authorised instruction is carried out.
- (3) The operator must not act on an instruction unless the operator has taken reasonable steps to verify that the instruction is properly authorised.
- (4) The operator must make a record of the following:
 - (a) each instruction received;
 - (b) the identity of the person who gave the instruction;
 - (c) when and how the instruction was given;
 - (d) the steps taken to verify that the instruction was properly authorised;
 - (e) any action taken in response to the instruction and when that action was taken;
 - (f) if carrying out the instruction was delayed or suspended, or the instruction was refused, the reason for that outcome.

18 Redemption and delivery rights and controls

- (1) The operator must take reasonable steps to facilitate the exercise by a person of a right (***withdrawal right***) under the platform to redeem, or direct the delivery of, an underlying asset.
- (2) The operator must not include in the platform rules, or in another arrangement governing the exercise of a withdrawal right, a term that prevents or materially restricts the exercise of that right, except to the extent that the term is:
 - (a) necessary to comply with a law; or
 - (b) reasonably necessary to manage fraud, operational error, cyber risk, sanctions, money laundering or terrorism financing risk or other financial crime risk; or
 - (c) expressly permitted by these Standards.

- (3) The operator must not charge a fee in connection with the exercise of a withdrawal right unless the fee does not exceed the costs reasonably incurred by the operator in facilitating the exercise of that right.
- (4) The operator must have and maintain adequate arrangements to prevent, detect and respond to unauthorised or erroneous, redemptions or transfers of underlying assets.
- (5) The operator must ensure that any delay, suspension or refusal relating to the exercise of a withdrawal right:
 - (a) is based on reasonable grounds; and
 - (b) is proportionate to the matter giving rise to it; and
 - (c) in the case of a delay or suspension, continues for no longer than is reasonably necessary; and
 - (d) is recorded, together with the reasons for the delay, suspension or refusal.
- (6) The operator must notify the person as soon as practicable of a delay, suspension or refusal referred to in subsection (5), unless giving the notification is prohibited by law.

19 Use of underlying assets

- (1) In this section, **relevant person**, in relation to an underlying asset, means:
 - (a) for a digital asset platform, the person for or on behalf of whom the underlying asset is possessed under the platform; and

Note: The person must be a client under the platform: see subsection 761GC of the Act.

 - (b) for a tokenised custody platform, the person who possesses the digital token for the underlying asset.
- (2) The operator must not use, permit the use of, or arrange for the use of, an underlying asset unless:
 - (a) the operator has given the client the disclosure required by subsection (3); and
 - (b) for a digital asset platform, the operator has given the relevant person the disclosure required by subsection (3) and the relevant person has expressly authorised the use; and
 - (c) for a tokenised custody platform, either:
 - (i) if it is reasonably practicable to do so, the operator has given the relevant person the disclosure required by subsection (3) and the relevant person has expressly authorised the use; or

- (ii) if it is not reasonably practicable to comply with subparagraph (i), the terms governing the digital token expressly authorised the use when the relevant person first possessed the digital token; and

Note 1: Examples of using an underlying asset that is a digital token includes using the underlying asset in consensus activities, including staking; lending the underlying asset to another person; proxy administration; and claiming entitlements arising from the underlying asset.

- (d) the underlying asset continues to be held or possessed for or on behalf of the relevant person under the platform in accordance with section 12; and
 - (e) the use is consistent with:
 - (i) the applicable holding arrangement; and
 - (ii) the interests and rights of the relevant person under that arrangement; and
 - (f) if the use would change the applicable holding arrangement or materially change the nature of the relevant person's interests or rights under that arrangement, the operator has complied with subsection (4); and
 - (g) the operator has complied with section 17 in relation to any instruction by which the authorisation referred to in paragraph (b) or subparagraph (c)(i) is given; and
 - (h) the use does not materially impair the exercise of a right under the platform to redeem, or direct the delivery of, the underlying asset; and
 - (i) the use is permitted under the platform rules; and
 - (j) the operator otherwise complies with these Standards in relation to the use.
- (3) The disclosure required under paragraph (2)(a) to (c) must be in writing, clear, concise and effective and include the following:
- (a) the nature of the use and how it will operate;
 - (b) the material risks arising from the use;
 - (c) any circumstance in which control of the underlying asset may be transferred to, or exercised by, another person, a smart contract, protocol or other arrangement;
 - (d) any material effect of the use on:
 - (i) the holding or possession of the underlying asset; or

- (ii) the relevant person's interests or rights in relation to the underlying asset; or
 - (iii) the exercise of a right to redeem, or direct the delivery of, the underlying asset; or
 - (iv) the protection of the relevant person's interests or rights if the operator, a custodian or another person that, in connection with the use, holds or possesses the underlying asset or exercises control over it, becomes insolvent; and
- (e) any fee, benefit, revenue, reward or other consideration arising from the use, including how it is calculated and allocated between the relevant person, the operator and any other person.
- (4) If the use of an underlying asset would change the applicable holding arrangement or materially change the nature of the relevant person's interests or rights under that arrangement, the operator must, before the use commences:
 - (a) ensure that the resulting holding arrangement complies with sections 12, 14 and 15, to the extent applicable; and
 - (b) update the records required under paragraph 12(3)(a); and
 - (c) comply with section 13 in relation to the resulting holding arrangement.
- (5) An operator of a digital asset platform must not require a relevant person to participate in an arrangement referred to in subsection (2) as a condition of:
 - (a) having underlying assets held or possessed for or on behalf of the relevant person under the platform; or
 - (b) maintaining an account under the platform.
- (6) An operator must provide:
 - (a) a relevant person with a reasonable mechanism to cease participating in an arrangement referred to in subsection (2) without requiring the relevant person to exercise a right to redeem, or direct the delivery of, the underlying asset; and
 - (b) a relevant person under a tokenised custody platform with such a mechanism, if it is reasonably practicable to do so.
- (7) The operator must have and maintain adequate arrangements to:
 - (a) identify and manage conflicts of interest arising from the use of underlying assets, including where the operator, a related body

- corporate, a custodian or another person engaged by the operator derives a direct or indirect benefit from the use; and
- (b) disclose any material conflict of interest on a website that is publicly accessible; and
 - (c) disclose any material conflict of interest directly to the client and:
 - (i) for a digital asset platform, disclose any material conflict of interest directly to the relevant person; and
 - (ii) for a tokenised custody platform, if it is reasonably practicable to do so, disclose any material conflict of interest directly to the relevant person.
- (8) Before an underlying asset is used, the operator must ensure that:
- (a) the terms governing the use are documented; and
 - (b) the terms governing the use and the disclosure required by subsection (3) are made available on a website that is publicly accessible.
- (9) The operator must make records of the following:
- (a) each authorisation obtained, each disclosure given or made publicly available and each provision of the platform rules or terms governing a digital token relied on for the purposes of this section;
 - (b) each determination that it was not reasonably practicable to:
 - (i) give a disclosure required by subsection (3) to the relevant person under subparagraph (2)(c)(i); or
 - (ii) obtain the relevant person's express authorisation under subparagraph (2)(c)(i); or
 - (iii) provide the relevant person with a mechanism referred to in section (6)(b); or
 - (iv) disclose a material conflict of interest directly to the relevant person under paragraph (7)(e);
 - (c) the basis for each determination referred to in paragraph (b);
 - (d) each use of an underlying asset;
 - (e) each fee, benefit, revenue, reward or other consideration arising from the use and how it was allocated;
 - (f) each loss, error or failure arising in connection with the use.

- (10) While the operator relies on a determination referred to in paragraph (9)(b), the operator must ensure that the record of the determination remains accurate and up to date.
- (11) The operator must indemnify, or otherwise make good, the relevant person for any loss suffered by the relevant person that is caused by:
 - (a) a negligent act or omission of the operator, or a person engaged by the operator, in connection with the use of the underlying asset; or
 - (b) a failure by the operator, or a person engaged by the operator, to use the underlying asset in accordance with:
 - (i) the authorisation relied on under paragraph (2)(b) or (c); or
 - (ii) the applicable holding arrangement or
 - (iii) the terms governing the use.

Division 3—Digital token underlying assets

20 Wallet and address information

- (1) This section applies in relation to:
 - (a) underlying assets of a digital asset platform; and
 - (b) underlying assets of a tokenised custody platform that are digital tokens.
- (2) The operator must make and maintain records that identify:
 - (a) the arrangements through which underlying assets are held or possessed in wallets, including the function of each wallet and the relationship between the wallets; and
 - (b) each wallet address or other location on public digital token infrastructure or other publicly accessible digital token infrastructure used to hold or possess the underlying assets; and
 - (c) for each wallet or other location referred to in paragraph (b):
 - (i) each class of underlying asset held or possessed in the wallet or location; and
 - (ii) the amount or quantity of each class held or possessed in the wallet or location; and
 - (d) any other information reasonably necessary to enable:

- (i) transactions involving the underlying assets to be identified on the wallets or locations referred to in paragraph (b); and
- (ii) for each class of underlying asset, the amount or quantity held or possessed in the wallets or locations referred to in paragraph (b) to be reconciled against the aggregate amount or quantity recorded under subparagraph 16(1)(c)(iii).

Note: a wallet address is also referred to as a public key.

- (3) Within 10 business days after the end of each quarter ending on 31 March, 30 June, 30 September or 31 December, the operator must give ASIC a report identifying, as at the end of the quarter:
 - (a) the arrangements referred to in paragraph (2)(a); and
 - (b) the wallet addresses and other locations referred to in paragraph (2)(b).

Note: This section does not require a record referred to in subsection (2) or report under subsection (3) to include a private key, seed phrase, authentication credential or other information that could be used to authorise the transfer of an underlying asset.

- (4) The operator must notify ASIC as soon as practicable of any change to a matter referred to in subsection (2) that materially affects the manner in which underlying assets are held, possessed or safeguarded.

21 Digital token identifiers

- (1) The operator must record and use a unique digital token identifier for each class of digital tokens that may be held or possessed as an underlying asset under the platform.
- (2) If a generally recognised digital token identifier exists for a class of digital tokens and it is reasonably practicable to use that identifier, the operator must use that identifier for the purposes of subsection (1).

Note: A digital token identifier issued in accordance with ISO 24165 may be a generally recognised digital token identifier for the purposes of this subsection.

- (3) The operator must not use the same digital token identifier for different classes of digital tokens.
- (4) The operator must use the digital token identifier in records, disclosures and reports required under these Standards that relate to the class of digital tokens.
- (5) The operator must maintain, and make available on a website that is publicly accessible, an accurate and up-to-date list of:
 - (a) each class of digital tokens that may be held or possessed as an underlying asset under the platform; and
 - (b) the digital token identifier used for each class.

Part 4—Arrangements with third-party custodians and sub-custodians

Division 1—Appointment and oversight

22 Appointment and ongoing responsibility

- (1) The operator must not engage a third-party custodian, and must ensure that no sub-custodian is engaged, unless the operator is satisfied on reasonable grounds that the third-party custodian or sub-custodian has:
 - (a) adequate organisational arrangements, systems and controls; and
 - (b) sufficient financial, technological and operational resources; and
 - (c) personnel with the knowledge, skills, experience, time and authority;

necessary to hold or possess and to safeguard the underlying assets to be held or possessed by the third-party custodian or sub-custodian in accordance with the applicable holding arrangements and these Standards.
- (2) The operator must take reasonable steps to ensure that, in holding or possessing and safeguarding underlying assets, each third-party custodian and sub-custodian acts consistently with:
 - (a) the requirements of these Standards; and
 - (b) the applicable holding arrangements; and
 - (c) the interests and rights of the persons for or on behalf of whom the underlying assets are held or possessed; and
 - (d) any properly authorised instruction applicable to the underlying assets.

23 Monitoring and remediation

- (1) The operator must set out in writing, implement and maintain a reasonable process to monitor and assess the following:
 - (a) whether each third-party custodian and sub-custodian continues to have the arrangements, systems, controls, resources and personnel referred to in subsection 22(1); and
 - (b) whether each third-party custodian and sub-custodian complies with the agreement required under subsection 25(1) or (5) (as applicable); and

- (c) whether, in holding or possessing and safeguarding the underlying assets, each third-party custodian and sub-custodian acts consistently with the matters referred to in subsection 22(2); and
 - (d) whether any agreements between custodians required under subsections 25(1) or 25(5) complies with subsections 25(2), (3) and (4); and
 - (e) any material risk that the engagement of a third-party custodian or sub-custodian presents to:
 - (i) the underlying assets; or
 - (ii) an applicable holding arrangement; or
 - (iii) the interests and rights of persons under the platform in relation to the underlying assets;including a risk arising from a material change to a matter referred to in subsection 22(1).
- (2) The process referred to in subsection (1) must include reasonable arrangements for the operator to:
 - (a) obtain from the third-party custodian or sub-custodian the information and access to records reasonably necessary to monitor and assess the matters referred to in subsection (1); and
 - (b) identify and assess any breach, deficiency, loss, error, disruption or other incident involving the third-party custodian or sub-custodian that materially affects, or is reasonably likely to materially affect:
 - (i) the underlying assets; or
 - (ii) an applicable holding arrangement; or
 - (iii) the interests and rights of persons under the platform in relation to the underlying assets; and
 - (c) in relation to a matter referred to in paragraph (b):
 - (i) require the relevant custodian to take appropriate action to address the matter; and
 - (ii) monitor whether that action is taken and is effective.
- (3) If the operator becomes aware that:
 - (a) a third-party custodian or sub-custodian no longer has the arrangements, systems, controls, resources or personnel referred to in subsection 22(1); or

- (b) a third-party custodian or sub-custodian has materially failed to act consistently with a matter referred to in subsection 22(2); or
- (c) a third-party custodian or sub-custodian has materially failed to comply with the agreement required under section 25; or
- (d) the engagement of a third-party custodian or a sub-custodian presents a material risk to:
 - (i) the underlying assets;
 - (ii) an applicable holding arrangement; or
 - (iii) the interests and rights of persons under the platform in relation to the underlying assets,

the operator must as soon as practicable after becoming aware of the matter, assess the matter and its effect, or likely effect, on the underlying assets, the applicable holding arrangements and the interests and rights of persons under the platform in relation to the underlying assets.

- (4) Following an assessment under subsection (3), the operator must:
 - (a) take reasonable steps to ensure that the matter is remedied within a reasonable period; and
 - (b) if the matter cannot be adequately remedied within a reasonable period, take reasonable steps to ensure that:
 - (i) the third-party custodian or sub-custodian to which the matter relates ceases to hold or possess the underlying assets; and
 - (ii) the affected underlying assets are transferred or otherwise dealt with in a manner that:
 - (A) protects those assets; and
 - (B) is consistent with the applicable holding arrangements, these Standards and the interests and rights of persons under the platform in relation to the underlying assets.
- (5) If underlying assets are transferred to or from a third-party custodian or sub-custodian, the operator must take reasonable steps to verify that all affected underlying assets have been identified, reconciled and transferred as required.

24 Review of arrangements

- (1) At least once every 13 months, the operator must:
 - (a) review whether the process referred to in section 23 remains effective in enabling the operator to monitor and assess the matters

referred to in subsection 23(1) and to identify, assess and address the matters referred to in subsections 23(2) to (4); and

- (b) review whether each agreement required under section 25(1):
 - (i) continues to be effective; and
 - (ii) continues to comply with section 25; and
 - (iii) continues to give the operator the rights, information, access, assistance and remedies reasonably necessary to comply with these Standards, including in relation to sub-custodians; and
 - (c) make a record of each review, its findings and any action taken or proposed.
- (2) If directed by ASIC in writing, the operator must arrange for a report to be prepared by a person specified in the direction on:
- (a) the effectiveness of the process referred to in section 23;
 - (b) whether an agreement required under subsection 25(1) complies with section 25 and remains effective; or
 - (c) both of these matters,

and must give the report to ASIC within the period specified in the direction.

Division 2—Agreements

25 Written agreements

- (1) The operator must not engage a third-party custodian unless the operator has a legally enforceable written agreement with the third-party custodian that complies with subsections (2) to (4).
- (2) The agreement must contain provisions:
 - (a) to the effect that the third-party custodian must, in holding or possessing and safeguarding the underlying assets:
 - (i) act consistently with the matters referred to in subsection 22(2); and
 - (ii) identify, safeguard and segregate the underlying assets in accordance with the requirements of section 16; and
 - (b) specifying how instructions relating to the underlying assets are to be given by the operator to the third-party custodian and, where

necessary, communicated to a sub-custodian, and to the effect that the third-party custodian must:

- (i) verify that each instruction has been given by or on behalf of the operator; and
- (ii) make a record of each instruction and the action taken in response to it; and
- (iii) carry out the instruction, or ensure that it is carried out by a sub-custodian, unless carrying out the instruction would be inconsistent with applicable law or an applicable holding arrangement, or would prevent the operator from complying with these Standards; and

(c) specifying how the third-party custodian must make and maintain records of the following:

- (i) the underlying assets;
- (ii) the interests and rights of persons under the platform in relation to the underlying assets;
- (iii) the applicable holding arrangements;
- (iv) the receipt, holding, possession, use, transfer and disposal of the underlying assets;
- (v) each transaction involving the underlying assets, including the identity of the person who authorised the transaction and when and how the transaction was authorised;

and to the effect that those records must be sufficient to:

- (vi) enable the operator to comply with sections 9, 12 and 16 and, to the extent applicable, section 20; and
- (vii) enable the holding or possession of the underlying assets to be conveniently and properly audited; and

(d) specifying reconciliation procedures under which:

- (i) the reconciliations are performed:
 - (A) each business day; or
 - (B) if it is ordinary and reasonable commercial practice for property of that kind to be reconciled less frequently, at a frequency consistent with that practice; and
- (ii) the existence and amount or quantity of each class of underlying asset held or possessed by the third-party custodian

- or a sub-custodian are compared with the records relating to that class of underlying asset; and
- (iii) the outcome of each reconciliation and any discrepancy are reported to the operator; and
- (iv) each discrepancy is identified, investigated and corrected in accordance with section 16; and
- (e) specifying reasonable rights of the operator to review and monitor the following:
 - (i) the third-party custodian;
 - (ii) each sub-custodian;
 - (iii) the arrangements under which the underlying assets are held or possessed;and the standards against which their performance and effectiveness will be assessed; and
- (f) to the effect that the third-party custodian must provide the operator with all information, access to records and assistance reasonably necessary to enable the operator to:
 - (i) monitor and assess the matters referred to in section 23; and
 - (ii) conduct the reviews required under section 24; and
 - (iii) comply with these Standards and applicable law; and
 - (iv) respond to a lawful request or requirement of ASIC; and
 - (v) facilitate an audit or other review of:
 - (A) the underlying assets;
 - (B) the records relating to those assets;
 - (C) an applicable holding arrangement;
 - (D) the third-party custodian's compliance with the agreement; or
 - (E) the third-party custodian's or a sub-custodian's conduct in holding or possessing and safeguarding the underlying assets; and
- (g) to the effect that the third-party custodian must notify the operator in writing:

- (i) before a proposed material change to the manner in which the underlying assets are held, possessed or safeguarded takes effect or, if that is not reasonably practicable, as soon as practicable after the change takes effect; and
 - (ii) as soon as practicable after becoming aware of:
 - (A) a material or systemic breach of the agreement; or
 - (B) an incident that materially affects, or is reasonably likely to materially affect, the underlying assets, an applicable holding arrangement or the interests and rights of persons under the platform in relation to the underlying assets; or
 - (C) an event that materially affects, or is reasonably likely to materially affect, the third-party custodian's ability to perform its obligations under the agreement; and
- (h) to the effect that the third-party custodian must establish, maintain and test business continuity and recovery arrangements appropriate to the nature, scale and complexity of its activities in holding, possessing and safeguarding the underlying assets; and
- (i) to the effect that the third-party custodian must, including at the operator's direction, take appropriate action to address a breach, deficiency or other matter identified:
 - (i) by the third-party custodian; or
 - (ii) through the process referred to in section 23; and
- (j) to the effect that the operator may suspend the transfer of further underlying assets to the third-party custodian if the operator reasonably considers that the suspension is necessary to protect:
 - (i) the underlying assets; or
 - (ii) an applicable holding arrangement; or
 - (iii) the interests and rights of persons under the platform in relation to the underlying assets; and
- (k) to the effect that:
 - (i) the operator may terminate the agreement if the operator has reasonable grounds for believing that:
 - (A) an act or omission of the third-party custodian or a sub-custodian has resulted in a material breach of the agreement by the third-party custodian; or

- (B) to a material extent, the third-party custodian or a sub-custodian is not acting, or is unlikely to act, consistently with the matters referred to in subsection 22(2)

having regard to any action taken, or reasonably expected to be taken, to remedy the matter, and
- (ii) termination under subparagraph (i):
 - (A) does not require payment other than accrued entitlements and reasonable transfer expenses; and
 - (B) does not limit any right to damages the operator may have under the agreement; and
- (l) to the effect that, on termination of the agreement, the affected underlying assets must, within a reasonable period:
 - (i) be transferred to the operator or another person directed by the operator; or
 - (ii) otherwise dealt with as directed by the operator;

in a manner that protects those assets and is consistent with the applicable holding arrangements, these Standards and the interests and rights of persons under the platform in relation to the underlying assets; and
- (m) to the effect that the third-party custodian and any sub-custodian must not disclose confidential information relating to the underlying assets or persons under the platform other than:
 - (i) to ASIC; or
 - (ii) as required or permitted by law; or
 - (iii) as authorised in writing by the operator; and
- (n) to the effect that the third-party custodian and any sub-custodian must not take or grant a security interest, mortgage, lien or other encumbrance over or in relation to the underlying assets unless the interest:
 - (i) is consistent with these Standards, the applicable holding arrangements and the interests and rights of persons under the platform in relation to the underlying assets; and
 - (ii) does not secure fees or other obligations owed to the third-party custodian or the sub-custodian; and
- (o) to the effect that, at least once every 13 months, the third-party custodian must give the operator a written statement that:

- (i) states whether the third-party custodian believes on reasonable grounds that, since the previous statement was given or, if no previous statement has been given, since the agreement commenced:
 - (A) the third-party custodian has complied with the agreement; and
 - (B) the third-party custodian and each sub-custodian have acted consistently with the matters applicable to them under subsection 22(2) and
 - (ii) states whether the third-party custodian has any reason to believe that:
 - (A) the third-party custodian will not continue to comply with the agreement; or
 - (B) the third-party custodian or a sub-custodian will not continue to act consistently with the matters referred to in sub-subparagraph (i)(B); and
 - (iii) identifies any known non-compliance or failure to act consistently with the matters referred to in sub-subparagraph (i)(B).
- (3) The agreement must contain reasonable provisions dealing with responsibility and liability for loss arising from an act or omission of the third-party custodian in connection with the agreement, including provisions that:
 - (a) do not exclude the third-party custodian's liability for direct loss, except in particular circumstances the operator considers reasonable; and
 - (b) includes reasonable indemnity provisions where appropriate.
- (4) The agreement must contain provisions:
 - (a) specifying the terms on which the third-party custodian may engage a sub-custodian to hold or possess underlying assets; and
 - (b) requiring the third-party custodian to act consistently with the matters in paragraphs (a) to (d) of subsection 22(2); and
 - (c) to the effect that the third-party custodian must give the operator:
 - (i) the identity and contact details of each sub-custodian; and
 - (ii) if the engagement would materially change the manner in which the underlying assets are held, possessed or safeguarded, an applicable holding arrangement, or the

interests and rights of persons under the platform in relation to the underlying assets, information about the change and its likely effect;

before the sub-custodian first holds or possesses an underlying asset or, in exceptional circumstances identified in the agreement, as soon as practicable afterwards; and

- (d) to the effect that the third-party custodian must notify the operator as soon as practicable after becoming aware of:
 - (i) a subsequent change to a sub-custodian's engagement that materially affects, or is reasonably likely to materially affect:
 - (A) the underlying assets; or
 - (B) an applicable holding arrangement; or
 - (C) the interests and rights of persons under the platform in relation to the underlying assets; or
 - (ii) an incident involving a sub-custodian that has, or is reasonably likely to have, an effect referred to in subparagraph (i); and
- (e) to the effect that each engagement of a sub-custodian can be terminated, and the affected underlying assets transferred or otherwise dealt with within a reasonable period, if the operator or the third-party custodian reasonably considers that this is necessary to protect:
 - (i) the underlying assets; or
 - (ii) an applicable holding arrangement; or
 - (iii) the interests and rights of persons under the platform in relation to the underlying assets.
- (5) The operator must ensure that each third-party custodian (**engaging custodian**) and each sub-custodian (**engaged custodian**) does not engage a sub-custodian (**engaged custodian**) to hold or possess underlying assets unless the engagement is documented in a legally enforceable written agreement that meets the requirements of subsections (2) to (4) as if the engaged custodian were the third-party custodian and the engaging custodian were the operator.

26 Foreign-law agreements

- (1) An agreement required under subsection 25(1) or subsection 25(5) is not required to include a particular provision required by subsection 25(2), (3) or (4) if:

- (a) section 15 applies in relation to an underlying asset to be held or possessed under the agreement; and
 - (b) because of a law referred to in subsection 15(1), it is not reasonably practicable to obtain an agreement that includes the provision; and
 - (c) omission of the provision does not prevent the operator from complying with these Standards; and
 - (d) the operator makes a record of:
 - (i) the basis on which paragraphs (b) and (c) are satisfied; and
 - (ii) the effect of the omission on:
 - (A) the underlying asset; and
 - (B) an applicable holding arrangement; and
 - (C) the interests and rights of persons under the platform in relation to the underlying asset;
 - (iii) the risks arising from the omission; and
 - (iv) the arrangements for managing those risks.
- (2) While the operator relies on subsection (1), the operator must ensure that:
- (a) the conditions in paragraphs (1)(a) to (c) continue to be satisfied; and
 - (b) the record referred to in paragraph (1)(d) remains accurate and up to date.