27 July 2021

BY EMAIL ONLY

[redacted]
Australian Securities and Investments Commission

To whom it may concern,

Thank you for providing the opportunity to comment on Consultation Paper 343 Crypto-assets as underlying assets for ETPs and other investment products (**Consultation Paper**).

CMCC Global (**CMCC**) is an established venture capital investor, operating venture capital funds that are among the first in Asia focused solely on blockchain technology. One of these, the Liberty Bitcoin Fund SP, a Regulated Cayman Mutual Fund, provides accredited investors the direct exposure to Bitcoin without the burden of acquiring and securing Bitcoin themselves, all Bitcoin held by the Fund are professionally custodied and its assets covered by insurance.

CMCC broadly supports ASIC's proposed approach as outlined in the Consultation Paper as it clarifies the regulatory position for fund managers seeking to harness the opportunities that come with an allocation of underlying assets to Bitcoin and Ethereum. CMCC has considered the questions in the Consultation Paper and provides answers to select questions below. Noting CMCC's general support for ASIC's approach, CMCC makes no comment in relation to the questions it has not addressed below.

While noting the Consultation Paper is not concerned with the classification of crypto-assets (such decision being a matter for government decision), CMCC prefers the term "digital assets" to "crypto assets" as we believe it is more technology neutral as well as more consistent with the language of other regulators in foreign jurisdictions. However, for the sake of consistency, we use the term "crypto assets" for the purposes of this response. We would recommend ASIC revisit this terminology as the process evolves. Terms otherwise used this response have the same meaning given to them in the Consultation Paper unless stated.

If it would be of assistance to ASIC, CMCC would be happy to discuss its responses or provide further detail relevant to ASIC's consideration. Please contact [redacted] if you have any queries in this regard.

Yours faithfully

CMCC Global

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.	CMCC strongly supports measures that will make crypto-asset ETPs available to Australian retail investors and considers regulated ETPs are clearly preferable to the generally unregulated means by which Australian retail investors currently gain exposure to crypto-assets. CMCC considers that ASIC is correct in its acknowledgement of increased interest in crypto-asset ETPs within Australia and notes: • Unprecedented demand for crypto-assets as evidenced by the growth in number of users in various crypto-asset exchanges across the globe. For instance, between 2020 and 2021, Coinbase's (a US based crypto-asset exchange) monthly active users have increased from 2.8m to 6.1m or more than 2x in a single year. • Similarly, retail adoption evidenced by the number of blockchain wallet users (worldwide) have increased from 52m (in July 2020) to ~75m as of date. At the back of this, payment platforms such as Mastercard and Paypal have begun to accept payment in crypto-assets. • In Bitcoin and Ether ETFs particularly, there were several debut listings in the Toronto Stock Exchange in early 2021 with total AUM increasing to billions of Canadian dollars in a relatively short span of time. In addition, ETP issuers expressed interest to expand to overseas markets through dual listings (e.g. 3iQ's Bitcoin Fund dual listing in Nasdaq Dubai). • Within the institutional space, traditional investors such as Fidelity Investments, MassMutual, and university endowments (e.g. Harvard and Yale University) have begun to invest in crypto-assets. Investment banks (e.g. J.P. Morgan, Goldman Sachs, and Citi) have also started to offer crypto-asset focused products to its clients. • The adoption of crypto-assets internationally is consistent with the adoption of crypto-assets by retail investors in Australia already. A report published by

	the Australian in June of 2021 stated that one in six Australians own crypto-assets, and a nationally representative survey conducted by YouGov in the same month (as reported by the AFR) predicts that four million Australians (including more than a third of Millennials) are set to purchase crypto-assets in the coming 12 months. With such high levels of retail investor demand, we consider that allowing crypto-asset ETPs is an appropriate step to ensure retail investors can seek exposure to crypto-assets with the protection of a regulated product and expertise of a professional ETP provider and service providers.
B1Q2 Do you consider that crypto-asset ETPs should be cleared and settled through licensed Australian clearing and settlement facilities? Please provide details.	Yes, to the extent that ETPs can be traded through a licensed Australian market, they should also be cleared and settled through licensed facilities to minimise counterparty risk for investors. Investors would also expect such ETPs to be cleared and settled in the ordinary course to the extent that those products were traded on the market. Further, it may be appropriate to apply margin requirements in respect of certain ETPs to collateralise against exposures in the context of volatile market and the clearing system can facilitate this. In addition, while the underlying crypto-asset has global liquidity, we believe that clearing and settlement facilities of the ETP should be onshore to make it as familiar to Australian investors as possible.
B1Q3 If you are a clearing participant, would you be willing to clear crypto-asset ETPs? Please provide your reasons.	Not applicable to CMCC.
B1Q4 If you are a trading participant, would you be willing to trade crypto-asset ETPs? Please provide your reasons.	Not applicable to CMCC.
B1Q5 Do you agree with our approach to determining whether certain crypto-assets are appropriate underlying assets for ETPs on Australian markets?	Yes, we support ASIC's proposed principles-based approach and support for decision-making by market operators, including establishing a new category of permissible underlying assets referable to crypto-assets,

If not, why not?	noting this new category is to be defined by parameters to be worked through with market licensees. With Bitcoin and Ether as the most widely known crypto-assets having significant liquidity, we support the strategy to *initially* focus on these crypto-assets for inclusion in the new permissible underlying assets category.
B1Q6 Do you have any suggestions for additions or modifications to the factors in proposal B1? Please provide details.	In addition to fund custodians, market makers and administrators, there should be reputable auditors with expertise in crypto-assets. Among others, this ensures a multi-level review of valuation methodologies (e.g. NAV).
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 are supportive of ASIC's approach and do not have any additional suggestions, other than the requirement for an auditor as noted in our response to B1Q6 above.
B2Q1 Do you agree that a new category of permissible underlying asset ought to be established by market operators for cryptoassets? If not, why not?	Yes, if the factors proposed in B1 are adopted (or indeed any other criteria in due course), then it follows that they should form the basis for what constitutes a permissible underlying asset to ensure that the assessment of those factors flow through to the admission requirements and operating rules of the market operator. While crypto-assets (particularly Bitcoin) have similar characteristics to traditional asset classes such as gold, we believe that the digital nature of crypto-assets warrants a different set of rules and requirements best delivered through the recognition of a new permissible underlying asset category.
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?	Yes, we agree with these practices and note they are consistent with standards set in other listings (e.g. Bitcoin ETFs in Toronto Stock Exchange). The following are select existing benchmark indices used in Bitcoin ETFs listed in the Toronto Stock Exchange: • TradeBlock XBX Index – the provider is one of the leaders for institutional traders and compliant with International Organization of Securities Commission's financial benchmark framework. Inputs to the index's algorithm are *"cleaned for*

	duplicates, relevancy, and appropriateness based on: (a) liquidity weighting (b) price variance weighting, (c) time based coefficient (d) binning ticks" • CME CF Bitcoin Reference Rate – the provider is authorized and regulated by the UK Financial Conduct Authority and compliant with EU Benchmarks Regulation as audited by Deloitte. The benchmark "*reflects global crypto-asset trading activity"* by considering "*a geographically diverse set of spot bitcoin trading platforms*". • Bloomberg Galaxy Bitcoin Index – Bloomberg Index Services Limited's Bloomberg Crypto Fixing ("CFIX") is used to calculate end-of-day index level. CFIX is an average of the Bloomberg Generic prices between 16:00:00 and 16:15:00 ET for each crypto-asset. Pricing sources are assessed for risk and suitability, and leverage a rules-based index methodology. • MVIS CryptoCompare Bitcoin Benchmark Rate Index – the provider is based Germany and regulated as an index administrator by the German Federal Financial Supervisory Authority. The benchmark ranks more than 165 global digital currency trading platforms based on the following factors: legal/regulatory, data provision, security, team/exchange, market quality, KYC/transaction risk, asset quality/diversity and includes a penalty factor for negative events.
B3Q2 Are there any practical problems associated with this approach? If so, please provide details.	We do not know of any practical problems with this approach.
B3Q3 Do you think crypto-assets can be priced to a robust and transparent standard? Please explain your views.	Yes, we believe this to be important and readily achievable with several choices of providers (please see previous comment) and numerous precedents. Initially in the Liberty Bitcoin Fund, we have used MVIS Crypto Index and have since transitioned to CF Benchmark.
B3Q4 Do you consider that a more robust and transparent pricing standard is achievable in relation to crypto-assets? For example, by using quoted derivatives on a regulated market.	We believe that the presence of quoted derivatives in exchanges (for example Bitcoin Futures traded in Chicago Mercantile Exchange) demonstrates the adequacy of pricing

Please explain and provide examples where possible.	information underlying those derivative products. For the ETP, we believe the most applicable price is the spot price using the same basis as the derivative pricing.
B4Q1 Are there any other good practice expectations in INFO 230 that need to be clarified or modified to accommodate cryptoasset ETPs?	None, we agree that INFO 230 needs only clarificatory modification to confirm that certain crypto assets may be capable of being appropriate underlying assets for an ETP and providing good practice information on how a robust and transparent pricing mechanism can be demonstrated. We believe the guidance discussed is consistent with current practices of ETF listings in Toronto Stock Exchange (for example). Too prescriptive a framework may lead to adverse consequences INFO 230 can readily accommodate a crypto asset based ETP. In particular, the statement that 'additional retail investor protections are appropriate where the underlying assets are considered … complex' is broad enough to capture the additional complexity that holding crypto assets may pose. One such complexity in the case of crypto assets may be in the treatment of hard forks or airdrops where additional crypto-assets are attributable to the underlying crypto-assets. In line with the guidance of INFO 230, it is good and fair practice to credit any token that results from hard forks or airdrops to the benefit of the investor. In the case of a long-only bitcoin ETP it would be appropriate to make it mandatory for the Fund Manager to sell any 'forked' or dropped token with best efforts at market price and with the proceeds purchase bitcoin, and a similar concept used for other crypto-assets. In the case of Ethereum, airdrops and forks are even more common and a fair treatment for investors needs to be mandated.

C1Q1 Do you agree with our proposed good practices in relation to the custody of cryptoassets? If not, why not? Please provide any suggestions for good practice in the custody of crypto-assets.	Yes, we broadly support ASIC's proposed good practices in relation to the custody of crypto-assets, especially regarding cold-storage and multi-signature signing approaches to minimise the possibility of interference with crypto-assets held by a custodian. We believe that these are consistent with the custodial practices of both private structures (e.g. trusts for institutional

	investors) and public securities (e.g. bitcoin ETFs). Internationally, many professional custodial services exist, some offered by subsidiaries of Standard Chartered Bank, Fidelity, and other prominent financial institutions. Those custodial services typically hire experienced personnel, have robust protocols for the execution of instructions, and come with insurance coverage against financial losses from theft and misappropriation by both employees and third parties. These may be, among others, suitable factors for ASIC to consider in clarifying "specialist expertise and infrastructure". However, we note at present that Australian professional REs and custodians do not appear to have, and are likely to be reluctant to obtain themselves, the necessary expertise and infrastructure to provide the requisite custody, ie cold storage, for crypto-assets in Australia. Meanwhile, established and well-regarded crypto-asset custodians are predominately offshore and will not necessarily be familiar with Australian custodial requirements for retail funds. As such, in providing good practice guidance for 'specialist expertise and infrastructure' for custody, acknowledge that REs will likely need to appoint such crypto-asset specialist custodians as sub-custodians. We would also propose that guideline C1(d) be amended to read: "Multi-signature or sharding-based signing approaches are used, rather than 'single private key' approaches, *except what is strictly necessary for the operation of the product*". The consistency of approach with the guideline proposed at C1(c)(i) would allow products that rely on a single-key approach for its trading strategy, to not be unduly prohibited on maintaining a smaller trading float on account of the key-sharding requirement.
C1Q2 Are there any practical problems associated with this approach? If so, please provide details.	No, we believe that these are consistent with current custodial practices. However, we suggest clarifying 'where' crypto assets are deemed to be held. Given ASIC's guidance that private keys should be kept on hardware wallets and disconnected from the internet, it appears that ASIC's preferred view is to consider the private key to be the asset of

	the scheme and the jurisdiction of the cold stored private key to be the place where the assets are held, but we suggest clarifying this point.
C1Q3 Do you consider there should be any modifications to the set of good practices? Please provide details.	Yes, see additional suggestions in C1Q1 and C1Q2.
C1Q4 Do you consider that crypto-assets can be held in custody, safely and securely? Please provide your reasons.	Yes, today many professional custodial services exist, some of them are offered by subsidiaries of financial institutions such as Standard Chartered Bank, Fidelity, and other prominent financial institutions. Those custodial services typically come with insurance coverage against financial losses from theft, inside jobs and hackings. There are many mechanisms in a distributed ledger system that, when combined, are sufficient to ensure that crypto-assets can be held safely and securely, primarily: • consensus based verification of transactions; • the remoteness of the probability that a single bad actor could acquire sufficient computing power to execute a 51% attack (and the devaluation of any attacked crypto-asset that would dissuade such an attack); • the immutability of blockchains and ease of confirming that transactions in previous blocks have not been altered; and • the remoteness of hashing collision when generating a public/private key pair, especially when using a multi-key signing approach as noted by ASIC in C1. All major misappropriations of crypto-assets can be traced back to a point of human error, and the regular low-level misappropriations of retail clients' crypto-assets are enabled by a lack of robust risk management on the part of retail investors.
C1Q5 Do you have any suggestions for alternative mechanisms or principles that could	No.

replace some or all of the good practices set out in proposal C1? Please provide details.	
C1Q6 Should similar requirements to proposal C1 also be imposed through a market operator's regulatory framework for ETPs? If so, please provide reasons and how it could work in practice.	We do not express a view on this question at this time.
C2Q1 Do you agree with our proposed good practices in relation to risk management systems for REs that hold crypto assets? If not, why not?	Yes, we agree that baseline KYC/AML/CTF obligations should be met in dealing with counterparties such as trading platforms, authorized participants, market makers, and other service providers to address concerns on fraud and money laundering.
C2Q2 Are there any other regulations (other than KYC and AML/CTF) that should form part of an appropriate baseline level of regulation for crypto-asset trading platforms used by REs and connected service providers? Please provide details.	As part of the KYC process for trading platforms, we believe it is important to identify the true jurisdictions of legal entities that operate them. In a 2019 study by reg-tech start up Coinfirm, it was observed that exchanges use legal entities in opaque jurisdictions for deposits and money transmissions etc. Among other concerns, presence in opaque jurisdictions poses a risk in terms of repatriating investor money when trapped in such jurisdictions and therefore likely outside the reach of Australian courts. Therefore, it is imperative that the baseline KYC process includes a clear understanding of a trading platform's legal formation / jurisdictions. We note that digital currency exchange providers are required to register with AUSTRAC and have specific rules that apply to their operation and customer KYC. Similar requirements apply to cryptoasset firms in the UK who must register with the UK's Financial Conduct Authority.
C2Q3 Are there any practical problems associated with this approach? If so, please provide details.	None, other than as noted in C2Q2.
C2Q4 Are there any other matters related to holding crypto-assets that ought to be	In Hong Kong, among the selection criteria of a Custodian by a Virtual Asset Fund Manager

recognised in the risk management systems of REs and highlighted through ASIC good practice information? Please provide details and any specific proposals.	(HK's version of Responsible Entity) is based on their set processes / rules in managing blockchain forks. ASIC may benefit from considering the suitability of Hong Kong's approach if it has not already done so. In addition, Platform Operators (e.g. crypto-asset exchanges) should monitor and implement rules, that, among others, oblige Platform Operators to notify ETP providers of any proposed hard fork, air drop or similar accretion to underlying ETP crypto-assets.
C2Q5 Should similar requirements to proposal C2 also be imposed through a market operator's regulatory framework for ETPs? If so, please provide reasons and outline how it could work in practice.	Yes, in other markets (such as Hong Kong), government agencies require market operators (e.g. crypto-asset exchange) to set baseline requirements, among others, for appropriate disclosure, KYC/AML procedures, and managing hard forks or airdrops. In particular, a market operator's framework could specify that an ETP provider must specify and define the underlying crypto-assets of their product in the ETP's constituent documents and relevant disclosure material. Ideally, we would like to see an opinion from ASIC or guidelines to be adopted by market operators as to whether ETP providers will be required to take any positive steps to make use of any hard-forked crypto-assets that can be accessed using the ETP provider's private key, and in what circumstances that would be appropriate. For example, it is intuitive that an ETP holding Ethereum prior to the Ethereum Classic/Ethereum hard fork would hold ETH as opposed to ETC given it is the dominantly traded crypto-asset, however there is less clarity regarding less widely adopted but still valuable hard forked assets such as Bitcoin Cash. We consider that the ETP provider should be able to specify its approach for handling hard forked crypto-assets, provided it is adequately disclosed to customers. As such, the ETP's approach for the treatment of hard-forked crypto-assets should be included in the relevant disclosure material, see our answer at [C3Q3].

C3Q1 Do you agree with our proposed expectations regarding disclosure obligations for registered managed investment schemes that hold crypto-assets? If not, please explain why not.	We broadly support ASIC's proposed expectations regarding disclosure obligations for registered managed investment schemes.
C3Q2 Are there any practical problems associated with this approach? If so, please provide details.	We consider ASIC's list of risks to be comprehensive. However, pending ASIC's view on treatment of hard-forked crypto-assets (whether these rules be set by the ETP provider, by a market, or at general law) as we have raised elsewhere in this response, it may be appropriate that ETP providers develop and disclose an approach for what kind of hard-forked crypto-assets will form part of the underlying assets, if any, and that this be made prominent in the disclosure material.
C3Q3 Are there any additional categories of risks that ought to be specified by ASIC as good practice for disclosure in relation to registered managed investment schemes that hold crypto-assets?	Below are our suggested additional risk disclosures: (1) Concentration risk - ETP is largely sensitive to swings and volatility driven by minimal diversification (as a result of limited permissible crypto-assets); (2) Risks that may arise due to reliance on the Responsible Entity; (3) Currency exchange risk – crypto-asset prices are usually quoted in US Dollars and therefore mismatched with investor money denomination (at AUS Dollars); (4) Taxation risk - There is no guarantee of applicable tax treatment between retail vs. institutional; (5) Lack of operating history; and (6) Potential conflicts of interest (e.g. if the RE is a shareholder of any service provider)
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?	No, we consider the DDO regime to be sufficiently generic to accommodate a range of products and risk profiles, including crypto-asset EFPs, such that no clarification is required at this time. Further, we consider the DDO requirements provide yet another aspect of welcome retail

	client protection that is not afforded via local digital currency exchanges and overseas based crypto-asset trading platforms.
D1Q1 Do you agree that crypto-assets are capable of being appropriate assets for listed investment entities on Australian markets? If not, why not	Yes, with the ubiquitous adoption of the internet for investment by retail investors, crypto-assets are increasingly seen as a natural part of many retail investors' (especially younger investors) asset allocation strategies. We empathise with ASIC's possible concern that the volatility of crypto-assets may indicate a risk of harm for Australian investors. However, it is our view that through proper regulation, such as permitting providers to offer crypto-asset exposure through an appropriately regulated ETP, the risk of harm to consumers can be minimised. In the alternative, the low barriers for entry into a crypto-asset market in creating a wallet for crypto-assets and transacting through exchanges which are not regulated by ASIC nor domiciled in jurisdictions with transparent reporting obligations, may mean that retail investors are instead exposed to high levels of risk in order to directly hold crypto-assets themselves or through an exchange. We would emphasise again the focus on crypto assets by young investors and the risk to the system that these investors participate in the asset class outside the regulated environment in the absence of a cost-effective, regulated, onshore product.
D1Q2 Do you agree with our proposed expectations for LICs and LITs that invest in crypto-assets to ensure equivalent standards are applied by market operators? If not, why not?	Yes, investors would still be able to invest in LICs and LITs to gain exposure to crypto-assets in similar way to other ETPs. There is no real basis for treating LICs and LITs differently in this respect and therefore any perceived lighter regulation of these particular investment vehicles could result in regulatory arbitrage.
D1Q3 Are there any practical problems associated with this approach? If so, please provide details.	None that we anticipate at this time.

D1Q4 Are there additional standards which ought to apply via market operators to LICs or LITs that invest in crypto-assets? If so, what are these expectations and why should they apply?	No, the existing standards imposed by market-operators to LICs or LITs should be sufficient for those that will invest in crypto-assets.
D1Q5 Should LICs and LITs only be able to invest significant funds in crypto-assets if this is either set out in their investment mandate or with member approval? If not, why not?	Yes, the future impact of crypto-assets is difficult to quantify or predict, and with that level of uncertainty there are significant opportunities and inherent risks. Those opportunities and risks should be disclosed to investors who are members or a LIC or LIT, preferably in the investment mandate of the LIC/LIT disclosed in the offer document prior to launch and otherwise by member approval or.
D1Q6 For the purposes of this proposal, we consider a material investment is where an entity invests or plans to invest more than 5% of its funds in crypto-assets. Should another materiality threshold apply?	To the extent any ETP we may establish will invest predominantly in crypto-assets (as opposed to a small percentage for diversification purposes), we do not have a strong view on this proposal. However, it may be worth considering different materiality levels depending on the nature and expertise of the ETP issuer - a technology focused ETP issuer that can demonstrate that it is particularly knowledgeable in blockchain technology and crypto-assets may be treated different from one that is not.

E1Q1 Do you agree with our proposal to establish a new asset kind that will cover crypto-assets?	Yes, we support ASIC's approach to establishing a new "crypto-asset" asset kind for AFS Licensees who operate registered managed investment schemes. This would be consistent with the approach ASIC proposes to adopt for the establishment of a new category of permissible underlying assets referable to crypto-assets in B1. However, we note that it is usual for ASIC to restrict "schemes of a particular kind" authorisations to REs who can demonstrate they have the organisational competence and capacity to operate multiple schemes of the same asset kind (ie 2 schemes for at least the past 2 years) (see ASIC Regulatory Guide 105.90-.92). Until an RE can evidence such a track record, a RE can only vary its AFSL to include a named

	scheme authorisation whereby ASIC can use its discretion as to whether to grant the variation having regard to the assets the RE represents to ASIC it will invest in and hold. As such, we expect ASIC will not be minded to grant any crypto-asset kind of scheme authorisations for at least two years, unless it modifies its approach in RG 105, and that in the meantime ASIC will have sufficient oversight and discretion to the extent it may approve named scheme variations and registration of schemes that invest in and hold underlying crypto-assets.
E1Q2 Do you consider that crypto-assets may be captured by the existing asset kinds? If so, please explain.	No, we agree with ASIC's proposal that crypto-assets do not fit within existing "schemes of a kind" as summarised in ASIC Regulatory Guide 2.89. Crypto-assets require bespoke treatment as they are inherently different from the existing asset kinds. They may, depending on their nature and purpose represent very different things: they may be digital currency, digital commodity or digital securities.
E2Q1 Do you agree with our approach to restrict the crypto-assets a registered managed investment scheme is authorised to hold (e.g. to bitcoin or ether)?	Yes. At the nascent stage of ETP providers offering exposure to crypto assets in Australia, there must be a focus on listed regulated products having sufficient liquidity and working as a use case to adequately prove the robustness of the underlying blockchain networks, distribution of mining power and other assumptions that underlie the proposal to offer crypto asset exposure through Australian ETPs. Once ASIC is satisfied that Bitcoin and Ethereum exposed ETPs are operating acceptably, we suggest adopting an 'asset-agnostic' approach, for example, that an ETP may only allow crypto asset projects above a certain market capitalisation level, e.g. 5 or 10 billion USD, or, crypto assets within a certain theme such as central-bank issued crypto assets or stable coins.
E2Q2 Do you consider there are any other aspects of the AFS licensing regime that need to be clarified or modified to accommodate	Not at this time.

investment products that invest in, or provide exposure to, crypto-assets?	