

# CP 381 / DRAFT INFO 225: Consultation

## Response

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This paper sets out the views of D2 Legal Technology (“D2LT”) on ASIC Consultation Paper dated 4 December 2024: CONSULTATION PAPER 381: Updates to INFO 225: Digital assets: Financial products and services.

D2LT is a legal data and change consulting firm, sitting at the intersection of FinTech and LegalTech. With offices in London, Frankfurt, New York, Charlotte, Hong Kong, Singapore and Sydney, it provides inter alia, strategic advice and implementation services to c. twelve leading investment banks and various other financial firms on the digitisation of legal agreements and opinions, digital assets and smart contract implementations. This has assisted its clients in the areas of resource management (such as capital, liquidity and collateral), regulatory reporting and compliance (such as qualified financial contract reporting (often colloquially known as “living wills reporting”), client assets and money compliance and ECB close-out netting reporting) and operational management. D2LT’s work has included leading document and legal opinion digitalisation programmes for major trade associations in the capital markets industry, such as the International Swap and Derivatives Association (ISDA), International Capital Markets Association (ICMA) and the International Securities Lending Association (ISLA). This has included creating for these clients, an industry Clause Taxonomy and Library for their published master agreement documentation, which is regarded as an important stepping-stone and legal agreement data standard to facilitate the use of smart contracts in the OTC derivatives, repo and securities lending industries respectively. As part of our engagements at major investment banks to set up and provide expertise to LegalTech and Legal Innovation teams, we have been involved in a number of Smart Contracts, and Digital Asset related projects over the last few years (including in relation to the operational infrastructure required).

Our responses have been mainly provided by:

**Akber Datoo – founder & CEO of D2LT.** Akber is a computer science graduate, having worked in the early part of his career as an IT developer at UBS. After leading a number of industry initiatives (e.g. FpML – a markup language for communicating the terms of transactions between the derivatives industry) and developing various trade platform and pricing applications, Akber grew frustrated with his in-house team and a growing gap between the legal function and the use of technology and systems in the management of financial instruments (that ultimately simply consist of contractual obligations). He requalified as a solicitor (of England and Wales) and trained and practiced as a derivatives lawyer at Allen & Overy LLP. In 2011, he founded D2LT, utilising his dual-skill set as both technologist and lawyer. Akber is the chair of the Law Society’s subcommittee of Smart Contracts and Digital Assets<sup>1</sup>, as well as an appointed member of its Technology and Law Committee. As well as being a P.R.I.M.E. Finance Expert, he is a professor at the University of Surrey and teaches undergraduates and masters students on topics such as legal data, distributed ledger technologies,

digital assets, smart contracts, fintech Policy and AI & Ethics. He has published a leading practitioner text published by Wiley, “Legal Data for Banking”, covering topics such as digital assets and smart contracts.

**Sarah Green – Head of Digital Assets and Trade Finance at D2LT.** Professor Sarah Green was Law Commissioner for Common and Commercial Law at the Law Commission of England and Wales from 2020 to 2024. During that time, her law reform work included the Electronic Trade Documents Act 2023, Advice to Government on Smart Contracts, updating the Arbitration Act 1996, scoping reforms to the law on Intermediated Securities, and drafting guidance and a bill to ensure that English law is well-suited to accommodate Digital Assets. In 2023, she won both the International Chamber of Commerce’s Award for the Individual Who Has Made the Greatest Contribution to the Digitalisation of Trade and the Outstanding Achievement Award at the British Legal Technology Awards. In 2022, she was placed on the Women in Fintech Power List and on Bloomberg’s “Who to Watch” Crypto List.

Sarah is now Head of Digital Assets and Trade Finance at D2 Legal Technology, Professor of Private Law at the University of Bristol and a member of T3i Partner Network. Sarah also sits on the UK Jurisdiction Taskforce, LawTechUK, The Digital Commonwealth, LegalUK, and the Trade Digitalisation Taskforce, as well as being an advisor to the APPG on Blockchain Technologies.

She was previously Professor of the Law of Obligations at the University of Oxford and a software consultant at Accenture. She has written books and articles on subjects such as blockchain, smart contracts, digital assets and intermediated securities, and her work has been cited extensively across several jurisdictions in appellate courts, Parliament and US Congress.

**Rachel Scanlon – Managing Director and Head of Asia Pacific at D2LT.** Rachel has been with D2LT for 5 years, based in Sydney, and heading up the Australia and Asia businesses. She has over 20 years’ experience in international financial markets, specialising in banking and finance as well as technology consulting with a focus on contract management, legal data, digital assets and AI. Rachel has worked at top tier investment banks including Goldman Sachs, and was General Counsel for ASX 100 fund manager Magellan Financial Group, having trained at the Sydney law firm Clayton Utz originally.

She undertook Said Business School’s Blockchain Programme in 2018, and has worked on a number of digital assets-related projects in recent years, recently moving into digitisation of trade finance in Australia. She specialises in legaltech advisory and contract data management, assisting large financial institutions with their data and contractual negotiations. She has been a finalist for General Counsel of the Year, and AI Female Leader of the Year by Lawyers Weekly.

## Proposals and feedback

**A1Q1 Are there any topics or guidance that have not been included in draft updated INFO 225 that you think should be? Please provide details.**

We would recommend the inclusion of considerations around regulatory harmonisation internationally, given the cross-border potential of many digital assets, in particular dealing with US, EU, UK and Asian regulations.

We are also of the view that for decentralised finance platforms, there should be considerations around the licensing of those initiatives, and the interplay with existing securities frameworks.

**A3Q1 Do you think it would be helpful to include an example of a wrapped token and/or a ‘stablecoin’ in INFO 225? If so, do you have any suggestions on the features of the potential examples in paragraphs 20-21?**

This would be helpful to include such an example, including pegging to a major currency or cryptocurrency, to better demonstrate the mechanisms at work.

**A3Q2 What are the practical implications for businesses (e.g. for issuers or intermediaries) in providing services in relation to wrapped tokens and/or ‘stablecoins’ that are financial products? Please give details.**

The practical implications include the need for adequate liquidity reserves (for stablecoin issuers), compliance with existing licensing regimes and ensuring that the businesses fit within those, and compliance with wider disclosure requirements when providing the services.

**A3Q3 Would any transitional provisions or regulatory relief be needed to facilitate transition from regulation of a wrapped token or a ‘stablecoin’ as a financial product under the current law to the Government’s proposed approaches to ‘stablecoins’ and wrapped tokens? Please give details.**

Yes, we would recommend a transition period or framework to allow for a smooth change. As for other regulatory changes, a phased approach with leniency around licensing requirements during the transition period, and well drafted explanations around the timing of application of the old versus new rules for the various business types. For existing businesses there should be a timed exemption or safe harbour if they need to tighten their operations to meet the new requirements.

**B1Q1 Do you agree that ASIC should progress with a class no-action position as proposed here? If not, please give reasons.**

We agree with the proposal in its current form.

**B2Q1 Do you agree that the same regulatory obligations should apply to digital asset and traditional financial products of the same category (e.g. securities, derivatives)? Please explain your response and provide specific examples.**

We agree that the same obligations should apply. A consistent licensing framework across products and offerings builds security and faith in the system, and prevents arbitrage. Protection for investors should also be consistent, and encourage investors to be optimistic about entering into these products, being able

to trust the regulatory system. An example would be that a digital or tokenised security should be subject to the same disclosure requirements as a traditional instrument. The principles applicable to existing instruments should still be applicable. We acknowledge that this may not work for all digital asset classes and in some cases a bespoke or hybrid approach may be necessary, such as for smart contracts.

**B3Q1 In relation to the authorisations sought during an AFS licence application, do you agree that the existing authorisations are generally appropriate to digital asset service providers?**

Generally speaking yes they are, but some adjustments will be necessary to reflect the different nature of these products. Note should be given to the centralised versus decentralised nature of digital derivatives contracts, which also may be more volatile or illiquid, and for more innovative products where the category could be considered uncertain, regulatory guidance will be necessary to avoid confusion. We recommend looking at how other jurisdictions eg. Singapore, have handled these issues.