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Dear Digital Assets Team

Consultation paper 381: Updates to INFO 225: Digital assets: Financial products and services

We, BlackGold Legal, would like to express our gratitude for the opportunity to submit our response to Consultation Paper 318 regarding updates to INFO 225.

Our firm has spent almost a decade committed to providing exceptional legal and advisory services to blockchain technology clients. As such, our responses to the questions raised in the Consultation Paper have been formulated with careful consideration and aim to provide greater clarity and certainty to the industry.

Whilst we appreciate that ASIC is making an effort to seek industry input to its proposed updates to INFO 225 – our view is that:

1. The proposed updates do not help clarify the legal obligations of participants in the industry, given that INFO 225 is distinctly not legislation;
2. There still remains a distinct lack of regulatory clarity in respect of digital assets, and rather than updating INFO 225 we suggest that ASIC should instead advocate for new fit-for-purpose legislation.

We have had the benefit of reading Associate Professor Darcy Allen and Professor Chris Berg's submission[1]. We strongly agree with their submission and the arguments they make therein.

We understand that although ASIC does not control the legislative arm of government, the current lack of clear regulatory framework leaves significant challenges for businesses looking to grow and innovate within this industry in Australia.

With respect, our strong belief is that looking at digital assets through the lens of existing regulations (principally the *Corporations Act 2001* (Cth)) is not satisfactory or particularly helpful for participants in the industry. Our view is that this new class of assets desperately

[1] Submission published at https://chrisberg.org/wp-content/uploads/2025/02/BergAllen-Response-to-CP-381-Updates-to-INFO-225.pdf

needs tailored and appropriate legislation to clarify its position at law. To this end (echoing Associate Professor Allen and Professor Berg's submission) "*we recommend that ASIC uses its position to advocate for timely, clear legislation that establishes long-term certainty for the industry.*"

Throughout the last decade, we have advised many local and international clients on the (lack of) regulatory regime for digital assets and blockchain technology in Australia – with a resounding majority choosing to establish and grow their businesses in other jurisdictions where there is clear legislation and regulatory regimes that they can follow. Whilst it is evident that no regulatory regime is perfect, any clear regime is better than no regime. Many of our clients have chosen to establish businesses in UAE, Hong Kong or Singapore instead of Australia. We see this as such a profoundly wasted opportunity for fostering Australia's future economic potential.

Both we and a number of our clients have been disheartened and disappointed by ASIC's decision to pursue Australian crypto and blockchain tech businesses for alleged breaches of law – most notably the recent cases against Block Earner and Finder. In both instances, from our reading of case transcripts, it is evident that both of these businesses sought legal advice and spent time, money and effort in trying to comply with the existing regulatory framework. It is notable that specifically in the Block Earner case, whilst it was found that the fixed-yield product was a product requiring an AFSL, the court relieved Block Earner from pecuniary penalties. However, ASIC has made the decision to appeal this judgement to seek harsher penalties.

Furthermore, ASIC's persistent relentless pursuit of Finder for its fixed-yield product and appeal of the judgement which was passed in Finder's favour in our view seems excessive and an overreach by the regulator. We find this is especially concerning where there has been no discernible consumer loss for customers that used the product, and where Finder had gone to significant lengths to consult legal professionals and engage with ASIC prior to the launch of the product.

Our view is that both of these cases are concerning because they signal to digital asset market participants that ASIC is intent on filing claims against businesses that have made genuine efforts at compliance, even in an admittedly nebulous regulatory framework. It is our view that this style of 'regulation by enforcement' is likely to have a detrimental effect on innovation and entrepreneurship within this increasingly important industry.

We find it curious that ASIC would seek to prosecute the Block Earner and Finder cases, when, as far as we are aware, no claims have been lodged by the regulator against FTX Australia. We are all acutely aware of the consumer harm that was occasioned by the FTX collapse, and yet FTX held an AFSL.

In closing, we reiterate our position is that digital assets require this own tailored legislation – anything short of that leaves doubt and uncertainty for individuals and businesses trying to build and create in this new and innovative field. We ask that ASIC call on members of parliament to help it regulate digital assets within the framework of purpose-built legislation – a clear regulatory line facilitates both operation within and enforcement of that boundary.

If you have any questions regarding our submission, please do not hesitate to contact the authors.

Kind regards
Brenda Saveluc, Director
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