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Consultation paper 381 regarding proposals to update “Information Sheet 225: Crypto-assets”

Thank you for the opportunity to provide a submission to “Consultation paper 381 *Updates to INFO 225: Digital Assets: Financial Products and Services* ([CP 381](#)) outlining proposals to update Information Sheet 225 *Crypto Assets* ([INFO 225](#)).”

Our submissions to select aspects of the consultation are found in Schedule 1.

About Pier Two

Established in 2018, Pier Two is an Australian-based, APAC-focused institutional staking provider and node operator, operating highly performant hybrid cloud and bare metal infrastructure.

Staking Commentary

Staking is an essential mechanism for securing and maintaining the effective operation of proof-of-stake (PoS) blockchain networks and limiting the security of these networks due to misaligned, but well-intentioned applications of financial services

laws, should be reconsidered as it “would represent a significant hindrance to the effective operation of blockchains”.¹ Stated broadly, non-custodial staking should not require a license, as it does not involve the handling of client assets. However, when a validator assumes custody and control of assets directly, regulatory oversight is necessary.

There is a broader structural opportunity regarding the operation of these systems which are increasingly being adopted into the global markets in such broad modalities that preventing or otherwise impacting holders of proof of stake assets from engaging in staking in underrepresented regions like Australia (for example, due to capital requirements to meet protocols minimum staking commitments²) could create a significant missed opportunity or, worse, endemic market risk. We already notice a significant number of validators clustered with the same cloud providers in the same regions (i.e., not Australia). Australia can disproportionately contribute to the mitigation of concentration risk geographically due to its remoteness to the USA and EU and proximity to APAC centers of population and users.

We have taken a conservative regulatory position and Pier Two Pty Ltd is a corporate authorised representative of TAF Capital Pty Ltd (TAF Capital), AFSL 425925, CAR Number 1307718. We are ISO27001:2022 certified as of April 2024 and SOC 2 Type 1 certified as of 20 February 2025. Our SOC 2 Type 2 audit window commences on 10 March 2025, with plans following that to work toward specific node operator security standards, being either (or both) the D.U.C.K Framework and NORS certification. We take our role of supporting infrastructure in this emerging economy seriously and are objectively one of the most performant non-custodial ETH node operators globally.

We welcome regulation, and look forward to nuanced and specific legislation, in addition to non-binding or qualified examples, that embraces the complexity and opportunity of crypto-assets in Australia.

The tyranny of distance is not as debilitating to transacting globally as it once was, yet history echoes and we are still a common law country, with our quirks. If the recently passed rules regarding arrangements for qualifying cryptoasset staking

¹ Explanatory Memorandum To The Financial Services And Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2025 2025 No. 17, P 2.

² As suggested in Example 2 of the draft consultation.



do not amount to a collective investment scheme³ can work in the United Kingdom, they could work in Australia as well. Notably, the approach taken in the UK is incumbent on the need for there to be an appropriate degree of consumer protection from the risks associated with the marketing of staking products and the UK considers that this protection is delivered by communications on staking arrangements being provided.⁴

Ultimately, for operators that provide staking or node services without controlling client assets, we would welcome a legislated carve out (similar to the UK).

General Commentary

Global uniformity in approach is key in this industry as the technology is not managed jurisdictionally and is not reliant on isolated trust structures. The real risk is counterparty risk in traditional markets, in the blockchain ecosystem, when considered against staking non-custodially on proof of stake networks, it is protocol risk. ASIC and the Australian Government should focus on where the risk is. That is, if the underlying protocol fails, then everyone loses. If staking is done in a non-custodial manner via a professional node operator, it doesn't quite settle that there is a financial risk (other than latent price exposure, which would happen anyway if holding a relevant proof of stake token).

Engendering highly technical homegrown teams to contribute to the integrity of these systems is paramount for the future of the global financial system and to avoid geographic concentration risk. Australia is building more data centers, and node operators use a lot of compute, bringing this business into Australia could fundamentally shift the power dynamic in APAC, especially in concert with projects like the Marinus Link in Tasmania, The Sunshine Coast landing point for the Tabua trans-Pacific subsea cable and the Sun Cable in the Northern Territory.

³ <https://www.legislation.gov.uk/ukxi/2025/17/made>

⁴ in compliance with the requirements of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and relevant FCA rules and guidance.



Incentivise operators and data centers to enter behind-the-meter deals with renewable energy generators and act as load-shedding sites - node operators, when they are managed correctly, are globally redundant and can shift operations essentially immediately to ensure systems operate. If this industry was scaled and approached in such a way, Australia could manage energy security, fund the growth of thousands of jobs, and ensure Australia disproportionately contributes to the APAC region regarding data, node operations, and the underlying systems that will be ubiquitous within the next twenty years. As more fiat-backed stablecoins are used on-chain, interoperability between these networks and ensuring client and geographic diversity underpins the systems that these markets exist on is important.

Please contact us if you would like to discuss our submission and thank you again.

Yours Sincerely

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Schedule 1 - Pier Two Responses

Proposal	ASIC Request	Pier Two Submissions
A1 We propose to update INFO 225, subject to feedback from this consultation. See draft updated INFO 225 in the attachment to this consultation paper.	A1Q3 Do you agree that the good practice guidance in INFO 225 directed to responsible entities is applicable to providers of custodial and depository services that provide custody of digital assets that are financial products? Are there any good practices that you would like added (e.g. on staking services)? Please provide details.	<p>A1Q3</p> <p>Pier Two would be delighted to see the inclusion of specific practices for node operators in line with the NORS⁵ and D.U.C.K. Frameworks⁶ in a similar way to RG 133.</p> <p>Agree with the applicability of good practices but suggest adding specific guidelines for staking services:</p> <ul style="list-style-type: none"> • Use multi-signature wallets, MPC or hardware security modules (HSMs) aligned with ISO/IEC 27001. • Align client fund segregation practices in line with Regulatory Guide 133 for digital assets. • Encourage transparency about staking lock-up periods and associated risks under Section 912A(1)(h).

⁵ <https://nors.global/about/>

⁶ <https://duck-initiative.gitbook.io/d.u.c.k.-knowledge-base>



Proposal	ASIC Request	Pier Two Submissions
		<p>There are also practical matters insofar as public validators such as Solana may be deposited into by anyone, as they rely on a delegated proof-of-stake (dPoS) design, with no minimum asset commitments. This differs blockchain to blockchain. For example, with Ethereum, a deposit for a single validator requires 32 ETH. Guidance regarding whether directly allowing users to engage with PoS and dPoS staking activity and how to manage this from ASICs perspective would be helpful to include in the updated Info 225.</p>
<p>A2 We propose to include the worked examples as set out in draft updated INFO 225.</p>	<p>A2Q1 Do you have comments on any of the proposed worked examples? Please give details, including whether you consider the product discussed may/may not be a financial product.</p> <p>A2Q2 Are there any <i>additional</i> examples you would like to see included? Please give details of the suggested example(s), and why you consider the digital asset discussed may/may not be a financial product.</p> <p>A2Q3 For any of these examples, are there any unintended consequences? If so, what are these and what do you propose in</p>	<p>A2Q1</p> <p>Clarity regarding non-consolidated client digital assets and how ASIC considers arrangements like that would be helpful, for example:</p> <ul style="list-style-type: none"> (a) if a user stakes the designated amount required to act as a validator (e.g. 32 ETH), and the funds are not comingled by the exchange (as an addition to the scenario described in example 2); (b) staking of user assets where no minimum stake is required; (c) makes a distinction between retail and wholesale users for any native or pooled staking arrangement; and (d) use cases that could include scenarios where minimum staking thresholds are managed through



Proposal	ASIC Request	Pier Two Submissions
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response?

audited smart contracts to meet minimum stake requirements.

A2Q2

It may be helpful to cover examples of non-custodial staking services and liquid staking tokens. Recommend adding examples for:

- Wholesale-only staking operators where a non-custodial operator facilitates staking for wholesale clients without pooling assets and where clients control the withdrawal address; and
- Liquid staking tokens with staking receipts showing deposit allow stakers to manage their staked tokens due to protocol withdrawal timelines.

Notably, blockchains themselves are not “the relevant “financial product”” and “the [relevant] Blockchain, a means of acquiring [tokens] and a means whereby business operators who hold [things on it] can register as [users] are not components of, and are not themselves, the mechanism which allows the user to make the [relevant financial product]. One cannot “deal” in these aspects of the system, which may be contrasted against the ability to issue [the relevant product by a “person”].”⁷

⁷ *Australian Securities and Investments Commission v BPS Financial Pty Ltd* [2024] FCA 457 at para 110. Please note that [bracketed] amendments have been made by Pier Two for broader application and ease of reading (let us know if we are wrong please, we’re trying!).



Proposal	ASIC Request	Pier Two Submissions
		<p>This seems to lead to the conclusion that native staking via non-custodial node operators may not be considered a financial product, but requires clarification.</p> <p>A2Q3</p> <p>Example 2 could inadvertently be interpreted as, or imply, that all staking involves pooling, neglecting non-custodial operations where assets remain under client control.</p> <p>It would be helpful to cover more scenarios in example 2 regarding staking on native PoS chains. This is because due to the way the relevant PoS networks rules are enforced (smart contracts), while assets could be considered to be in the same place at a smart contract or protocol level, they are indeed controlled by the custodial owner of the asset only, and cannot be transferred or controlled by a non-custodial service provider like a node operator. The assets are collectively used to provide network integrity, consensus and economic security.</p>
<p>B3 We propose to tailor licence authorisations in relation to certain digital assets that are derivatives, and for digital assets that are ‘miscellaneous financial investment products’.</p>	<p>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?</p> <p>B3Q2 Do you agree with the proposal to tailor the derivatives and miscellaneous</p>	<p>B3Q1</p> <p>Partially agree that the existing authorisations are appropriate but highlight gaps for wholesale, non-custodial staking services (if required). Current authorisations focus on traditional financial products and</p>



Proposal	ASIC Request	Pier Two Submissions
	<p>financial investment products authorisations? Are there any others that you would recommend?</p>	<p>need adjustments to address blockchain-native features, particularly for liquid staking tokens.</p> <p>Wholesale operators often provide non-custodial staking services that involve enabling financial benefits without direct control of assets (ie, technical duties are separated from custody of assets and rewards). Such services don't clearly align with the traditional financial product definitions.</p> <p>Digital assets require unique considerations, such as decentralised custody models and automated processes via smart contracts. These models differ significantly from traditional custodial or depository services envisioned in Section 766E.</p> <p>B3Q2</p> <p>Recommend considering the approach regarding the creation of an authorisation category, or carve out completely, for operators that provide staking services without controlling client assets and provide guidance on whether a non-custodial staking operator is either exempt (most likely) or is able to be covered by a corporate authorised arrangement.</p>



Proposal

ASIC Request

Pier Two Submissions

Operators providing staking services without asset custody face challenges aligning with traditional financial product definitions. Tailored authorisations, or carve outs where those operators are not the arranger, custodian or issuer but a mere service provider, there should be (and seems to be viewed by ASIC as such) a distinction between custodial and non-custodial services.

It is recommended to expand tailored authorisations, or carve outs, to include or disinclude:

- authorisations for non-custodial and wholesale node operators;
- specific provisions for tokenised positions, wrapped assets, and algorithmic financial products; and
- address operators facilitating access to multiple blockchains or staking protocols via APIs.

Tailored authorisations, or carve outs, will provide much-needed clarity for digital asset operators while ensuring compliance and investor protection in this evolving sector.

