



Response to ASIC CP 381

Submission via email ([digital.assets@asic.gov.au](mailto:digital.assets@asic.gov.au))

**Date:** February 28, 2025.

**From:** George Moskos, CEO - Derivatives.com.au Pty Limited (DCA).

**Summary:**

DCA welcomes the opportunity to provide feedback on ASIC CP 381.

Founded in 1998, DCA holds an Australian Financial Services Licence (AFSL) and is registered with the Commodity Futures Trading Commission (CFTC). We aim to deliver technological solutions to challenges and believe that proper regulatory guidelines can pave the way for technological advancements that better serve customers.

DCA was formed as the result of a change in the futures industry precipitated by the introduction of electronic trading. We have witnessed the demise of the brokered business as technology continues to proliferate. We are now witnessing the rise of machine-to-machine interaction and expect that, within a short time frame, artificial intelligence will provide further advancements within the financial services industry.

We hold that the creation of digital assets based on cryptographic technology represents the introduction of a new technology. As such, regulatory regimes should be updated as part of a broader requirement based on many other factors, not solely the introduction of this new technology

Our responses aim to address the key questions and topics outlined in the consultation paper, with a focus on enhancing regulatory clarity, market integrity, and investor protection within the digital asset industry.

In our submission, we emphasise the importance of adhering to the objectives of Chapter 7 of the Corporations Act, particularly section 760A(c), which underscores the need for fair, orderly, and transparent markets in financial products. We highlight the necessity for digital asset service providers to understand and comply with these requirements to maintain the strength and integrity of the Australian financial market.

Additionally, we propose the implementation of a Consolidated Audit Trail (CAT) to enhance market transparency and integrity by providing a comprehensive audit trail of all trading activities. We also discuss the applicability of good practice guidance in INFO 225 to custodial and depository services for digital assets, stressing the importance of robust security practices and the location of hardware devices holding private key material within Australia.

Our responses also address the need for further consultation on staking services, particularly the risks associated with 'slashing,' and suggest including examples of wrapped tokens and stablecoins in INFO 225 to provide clearer guidance on these financial products.



We support ASIC's proposed class no-action position, with recommendations for extending the timeframe for lodgement and compliance to ensure adequate adherence to regulatory requirements. Furthermore, we advocate for applying the same regulatory obligations to digital assets and traditional financial products of the same category, ensuring consistency and investor protection.

Overall, our feedback aims to contribute to the development of a robust regulatory framework that supports the growth and integrity of the digital asset industry in Australia.

**Our Answers:**

**A1 Q1** *Are there any topics or guidance that have not been included in draft updated INFO 225 that you think should be?*

The updated INFO 225 should place greater emphasis on the objectives of Chapter 7 of the Corporations Act, particularly section 760A(c), which addresses the fair, orderly, and transparent provisions of markets in financial products.

In our experience, many digital asset service providers are either unaware of these requirements or hold misguided views that any inconsistencies from non-compliance will be arbitrated away. Worse, some providers offer premium services that contravene these requirements to a segment of their customer base.

The strength of the Australian financial market is largely due to the adherence to the fair, orderly, and transparent provisions described in the Corporations Act.

We also contend that most, if not all, known outages in the digital asset industry, both in Australia and elsewhere, result from a lack of understanding and adherence to the objectives of Chapter 7 of the Corporations Act or similar regulations in other jurisdictions.

Additionally, with the likelihood of many new licensed digital asset exchanges operating in Australia, it is now maybe the right time for ASIC to implement a Consolidated Audit Trail (CAT).

This would enhance market transparency and integrity by providing a comprehensive audit trail of all trading activities.

**Q2** *Are there any topics or guidance that were included that you think should not have been included?*

No

**Our Answers (cont.):**

**A1 Q3** *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?*

Yes.

*Are there any good practices that you would like added (e.g. on staking services)?*

DCA maintains that any hardware device used to hold private key material should not only be subject to robust security practices but also be located in Australia

Regarding staking services, more consultation is needed to address the potential consequences for retail investors. Specifically, there should be a focus on the risks associated with 'slashing,' where digital asset participants associated with a specific blockchain can autonomously or otherwise take control of an investor's digital assets.

Slashing can lead to significant losses for retail investors.

**A2 Q1** *Do you have comments on any of the proposed worked examples*

No, DCA largely agree with ASIC's interpretations associated with each worked example.

**Q2** *Are there any additional examples you would like to see included*

Yes, refer A3 Q1.

**Q3** *For any of these examples, are there any unintended consequences? If so, what are these and what do you propose in response?*

While there may be unintended consequences associated with the provided examples, we have not thoroughly examined all potential edge cases for each example. Therefore, we are not in a position to provide a definitive answer at this time.

**Our Answers (cont.):**

- A3 Q1** *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?*

Yes, it would be helpful to include additional examples. These examples should be prescriptive regarding the actual mechanisms associated with the underlying assets and the peg, whether digital or otherwise, that are linked to the stablecoin.

- Q2** *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 of providing services for wrapped tokens and stablecoins are similar to those for other financial products. However, for stablecoins, further work is needed to address the practicalities surrounding the peg mechanism.

- Q3** *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?*

No comment.

- B1 Q1** *Do you agree that ASIC should progress with a class no-action position as proposed here?*

DCA agrees that ASIC should proceed with the class no-action position as proposed.

- Q2** *Are the proposed conditions appropriate? Are there any additions or changes to the proposed conditions that will be more effective for investor protection?*

DCA agrees that the proposed conditions are appropriate. However, we suggest increasing the timeframe for lodgement from six months to twelve months to ensure adequate compliance.

- Q3** *Do you agree that the class no-action position should be dependent on a person lodging an AFS licence application or written intention to apply for a market and/or CS facility licence?*

DCA agrees that the no-action position should be contingent on a person lodging an application.

**Our Answers (cont.):**

- B1 Q4** *Should there be a deadline for applying for an AFS licence or commencing pre-lodgement discussions in relation to a market and/or a CS facility licence?*

The deadline should be twelve months from the publication date of the updated INFO 225.

- Q5** *For product issuers, should the no-action position extend to other obligations?*

Product issuers should be granted a no-action position. However, the timeframe for compliance should not exceed three months.

- B2 Q1** *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.*

DCA very strongly holds that digital assets and traditional financial products of the same category should adhere to the same regulatory requirements. Digital assets that fall into the same category as current financial products, such as securities or derivatives, are essentially a technological improvement on existing financial instruments. Therefore, applying the same regulatory framework ensures consistency, protects investors, and maintains market integrity.

- Q2** *Are there any aspects of ASIC's guidance that may need to be tailored for digital assets that are financial products?*

No comment

- Q3** *Do you agree that the approach proposed for custodial and depository services is appropriate for holding custody of digital assets?*

Yes, with the added requirement that private key material is held in Australia

*Do you agree that extending the omnibus client accounts is appropriate for digital assets that are financial products?*

Yes

**Our Answers (cont.):**

- B2 Q4** *In relation to organisational competence, what are your views on what ASIC could consider in applying Option 5 in Regulatory Guide 105 AFS licensing: Organisational competence (RG 105) for entities providing financial services in relation to digital assets that are financial products?*

DCA firmly holds that the core competencies required for organisations involved in digital assets should align with those expected of traditional financial service providers, marketplace operators, and custodians

- B3 Q1** *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?*

DCA agrees that the existing authorisations are generally suitable for digital asset service providers.

- Q2** *Do you agree with the proposal to tailor the derivatives and miscellaneous financial investment products authorisations? Are there any others that you would recommend?*

Regarding the proposal to tailor authorisations for derivatives, we caution that any digital asset referencing a derivative should be classified as such, regardless of leverage. For example, even if a futures exchange increases the margin requirement on a contract to 100%, it should still be considered a derivative

Additionally, we assert that the digital asset industry fundamentally lacks a robust understanding of derivatives and derivative markets. This deficiency poses significant risks to market stability and investor protection. Consequently, it is imperative that the existing core competency requirements for licensing remain.