



Division Head
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Date: Feb 28, 2019

Dear Treasury,

The following represents Apollo Capital's response to The Treasury's consultation paper on Initial Coin Offerings.

Apollo Capital is a multi-strategy crypto fund based in Melbourne, Australia. Apollo Capital invests in the crypto assets that are powering the next generation of computing infrastructure. Our investment process includes a regulatory review of compliance to relevant regulatory frameworks.

Definitions and Token Categories

1.1. What is the clearest way to define ICOs and different categories of tokens?

There is an increased industry understanding in categorising crypto assets. Note that we will use the term crypto assets as a broad term for all assets that are secured on an open blockchain network. Apollo Capital suggests the following categories:

- Cryptocurrencies. These are crypto assets whose main purpose are 'money-like'. This include crypto assets like Bitcoin and Zcash.
- Tokenised financial products. These are crypto assets that represent ownership and rights in a common enterprise and would fall under the regulatory framework of a Financial Product. An example of this are tokenised shares with voting rights in a company or in a MIS. Crypto20 is in our view an example of a crypto asset that would fall into this category.
- Utility tokens. These tokens have a specific utility but doesn't offer rights that reach the threshold of being categorised as a Financial Product under Australian regulatory framework or they are sufficiently decentralised not to represent rights in a common enterprise. We believe examples of this include Augur and Maker.

We refer Treasury to the FCA recent '[Guidance on Cryptoassets](#)' for a similar categorisation as above.

Drivers of the ICO Market

2.1. What is the effect and importance of secondary trading in the ICO market?

Crypto assets are often similar to early stage venture investing. One key differential factor is the early liquidity as crypto assets trade on exchanges. This increases price transparency and lowers liquidity risk compared to venture capital investing.

2.2. What will be the key drivers of the ICO market going forward?

The big boom in ICOs in H2 of 2017 was prompted by a market fuelled by speculation. ICOs have been around for around 5 years and will continue to play a role in launching new blockchain network independently of where in the market cycle we are.

Opportunities and Risks

3.1. How can ICOs contribute to innovation that is socially and economically valuable?

ICOs offer a way to bootstrap new networks by making early users stakeholders in a new network. This is a flatter and more democratic model versus traditional venture capital investing. See [this blog post](#) by Chris Dixon (a16z) for further thoughts on this. Economically, as blockchain networks predominately are a new

computing platforms for trust, massive savings and efficiency gains can be made for the society at large. See RMIT Prof. Jason Potts article 'The \$29 trillion cost of trust'.

3.2. How important are ICOs to Australia's capability to being a global leader in FinTech?

Crypto networks are a new computing platform for trust. It heralds a new design space for entrepreneurs, investors and computer scientists to build global software applications that utilise this primitive of trust. This has, and will continue to, lead to an explosion of innovation, particularly in the finance vertical. ICOs are a way for crypto startups to raise working capital without a heavy reliance of venture capital funding, itself centred in Silicon Valley. On a high level, ICOs are a new source of innovation funding— this should be taken seriously.

Specific to Fintech, Open Finance also known as Decentralised Finance, or #DEFI, is arguably the most promising emergent vertical in crypto - these project can create a more financially inclusive world.

There are projects that enable the borrowing and lending of assets peer to peer, i.e. without a bank or lending institution in between. Dharma, Compound and MakerDAO are key examples here.

Binance, the world's largest exchange, is developing a decentralised exchange that will enable the peer to peer trading of assets. This exchange will allow users to retain custody of their assets throughout the trading process.

Other projects are creating stable cryptocurrencies, so called stablecoins, pegged to USD, AUD and other currencies. These can deliver big efficiency gains for both consumers and merchants.

Crypto is both a threat to incumbent financial institutions and perhaps the biggest innovation opportunity of a generation. Australia should support, and incentivise, projects to be based in this country. Having clear ICO guidelines is a critical first step.

3.5. Are there other risks associated with ICOs that policymakers and regulators should be aware of?

ICOs have been very polarising. Most are not worthy of the money they raised through their ICOs. Hype, no doubt, drove much of the ICO boom in H2 2017. Conversely, some ICOs have funded extremely innovative projects that are provided substantial value.

Key risks associated with ICOs include:

- Fraudulent promises and claims
- Bad actors targeting unsophisticated investors
- The token sold in the ICO having little or no current or future value.
- ICOs do not represent shareholder rights in an enterprise. They offer few rights, particularly in the early stages of a network.

Regulatory Frameworks in Australia

4.1. Is there ICO activity that may be outside the current regulatory framework for financial products and services that should be brought inside?

It's Apollo Capital's view that crypto assets that are representative of a high enough level of rights in centralised projects are considered Financial Products under Australian regulation. All other crypto assets are either too decentralised or do not meet a sufficiently rights threshold to be considered a Financial Product.

4.2. Do current regulatory frameworks enable ICOs and the creation of a legitimate ICO market? If not, why and how could the regulatory framework be changed to support the ICO market?

More clarity is needed. We believe increased regulatory clarity of what constitute a Financial Product would benefit innovation in Australia. We would like to emphasis the global nature of the crypto landscape.

Specifically we believe the relevant regulator needs to clarify what 'rights' a crypto assets need in order to be categorised as a Tokenised Financial Product (our proposed categorisation above). We believe that the rights associated with a token to fall under this category should be similar to traditional shares or debt instruments. We further note that section 9 of Corporations Act (Managed Investment Scheme) refers to a 'common enterprise'. Apollo Capital believes crypto assets that are sufficiently decentralised cannot be categories as a common enterprise. Therefore we recommend the regulators evaluate the categorisation of crypto assets both along the lines of rights and decentralisation. As an example, in our view, a crypto asset with 'shareholder like' rights that are not sufficiently decentralised should be categories as a Tokenised Financial Product regulated under existing framework of a Financial Product. If a crypto asset is either sufficiently decentralised or does not reach the threshold of rights it cannot be categories as a Tokenised Financial Product and it should fall outside the perimeter of regulation of Financial Products. Apollo Capital believes that categorising crypto assets that are either sufficiently decentralised or do not have shareholder like rights as Financial Products would significantly impede the innovative landscape in Australia.

To ease the regulatory burden and promote innovation in Australia we propose that the relevant regulatory body sets up an Advisory Panel for crypto projects that guides projects how they fall within the (here proposed) categorisation. Such advice would also be helpful for exchanges wanting to list crypto assets.

Disclosure: Apollo Capital has investments in Bitcoin, Zcash, Augur, Maker and Binance Coin.

Kind regards,



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