



ASIC
Australian Securities &
Investments Commission

Submission to Treasury consultation paper

Crypto-asset secondary service providers—Licensing and custody requirements

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Executive summary

- 1 ASIC welcomes the opportunity to make a submission to Treasury’s consultation paper on [Crypto asset secondary service providers: Licensing and custody requirements](#) (the Consultation Paper), released on 21 March 2022.
- 2 Financial markets are always evolving, and product and service innovation is a sign of a vibrant, well-functioning market. Crypto-assets are a significant recent innovation, and some assets and their underlying technologies have the potential to reduce reliance on centralised intermediaries and traditional governance structures.
- 3 There has been a significant amount of speculation in crypto-assets by retail investors. However, our research shows many who have invested in crypto-assets do not understand the risks involved or that they are engaging in speculation.
- 4 Many of the risks and consumer harms present in the crypto-asset ecosystem are not new, and are similar to those faced by retail investors in the financial system. However, the technical features of crypto-assets mean it is often unclear whether they are financial products, and therefore within ASIC’s jurisdiction.
- 5 We consider that there is a strong case for regulation of crypto-assets and service providers to address the risks of harm to consumers. Any regulatory regime for crypto-assets needs to:
 - (a) provide appropriate levels of protection for consumers;
 - (b) be flexible and adaptable to respond to market and technological developments;
 - (c) align with approaches in overseas jurisdictions where appropriate; and
 - (d) avoid stifling innovation through legal and regulatory complexity.
- 6 We support the regulation of crypto-assets, and related services, occurring through the application of the financial services regulatory framework in Ch 7 of the *Corporations Act 2001* (Corporations Act). Relative to the other options in the Consultation Paper, this approach would:
 - (a) provide important additional protections beyond those proposed in the Consultation Paper, to ensure appropriate consumer protection and regulatory consistency with the financial services sector;
 - (b) lead to a less complex regulatory framework for the crypto-asset ecosystem, while also increasing certainty and clarity for all parties; and
 - (c) be capable of quicker implementation than a parallel licensing regime.

7 The token mapping exercise will be an important input to how different crypto-assets should be categorised for regulatory purposes, and what obligations should apply. We therefore think that the final design of how crypto-assets are regulated should only be settled after the exercise is completed and the full range of risks that different crypto-assets present are examined.

8 The reasons for these views are set out in more detail in Sections A and B of our submission.

Additional protections

9 In our experience, regulatory regimes without sufficient protections can stifle innovation. Uncontrolled risks can lead to substantial negative consequences. Additionally, a ‘light touch’ approach can result in misunderstandings about the level of protections offered, or implicitly encourage certain consumer behaviours.

10 We consider that many of the additional obligations that would apply as a result of regulating crypto-assets as financial products are necessary to appropriately protect consumers. This includes:

- (a) additional ‘general’ obligations, such as requirements to maintain competence to provide services and to have arrangements for compensating consumers for loss or damage;
- (b) protections associated with the quality of advice about crypto-assets; and
- (c) some additional requirements to support market integrity.

11 Although there is not a consistent global approach to regulating crypto-assets and related products and services, a common theme is emerging that there is a need for strong regulation to promote consumer protection. We provide examples of measures from other jurisdictions such as the United Kingdom, the United States of America, European Union and Canada, and commentary from international bodies to highlight the need for obligations that go further than those proposed in the Consultation Paper.

12 International comity is important due to the global nature of many crypto-asset businesses and business models. To that end, the final design of any regulatory framework will need to ensure that consumers receive protections when dealing with, and regulators are able to supervise, businesses with a substantial presence outside of Australia.

13 Our views on these matters, and other obligations that should apply in the crypto-asset context, are set out in s C and D. Section C also provides our detailed comments and feedback on the obligations proposed in the Consultation Paper.

- 14 However, the Ch 7 regime is not intended to remove all risks of poor consumer outcomes. As such, regulating crypto-assets as financial products (and services relating to those assets as financial services) would similarly not remove all risk, and some consumers will experience losses.
- 15 The token mapping exercise should also consider whether further protections or access restrictions would be warranted for certain types of crypto-assets, particularly unbacked, speculative crypto-assets.

Regulatory complexity

- 16 We consider that designing a parallel regime which works in tandem with the Ch 7 framework to regulate different parts of the crypto-ecosystem would result in substantial additional complexity for businesses and consumers. It also risks creating a regime where the ongoing focus is on what side of the legal perimeter a crypto-asset falls, instead of on whether behaviours are harmful to consumers.
- 17 At present, it can be difficult to determine whether a crypto-asset, or a product relating to a crypto-asset, is a financial product. Differential regulatory treatment based on this definition will result in substantial uncertainty about what obligations and protections apply.
- 18 Additionally, many businesses may need to hold both an Australian financial services (AFS) or Australian markets licence (in respect of services relating to crypto-assets which are financial products), and the proposed crypto-asset secondary service provider (CASSPr) licence (in respect of services relating to other crypto-assets). These business would also need to implement systems to support them to comply with differing obligations in respect of functionally similar products and services.
- 19 In the context of regulatory complexity, ASIC notes that the AFS licensing regime in Ch 7 replaced multiple earlier licensing regimes, and was intended to provide more uniform regulation, reduce administrative and compliance costs, and remove unnecessary distinctions between products.

Overview of submission

- 20 The structure of our submission is as follows:
- Section A sets out the need to regulate crypto-assets as financial products based on characteristics of the assets, retail consumer participation and recent market developments.
 - Section B examines possible definitions of crypto-assets, and the types of services that should be regulated. We also consider that Treasury's token mapping exercise should explicitly consider what regulation should apply to issuers of crypto-assets to avoid regulatory gaps.

- Section C highlights some obligations and protections that in our view should form part of any regulatory regime for crypto-asset service providers, and contains our comments on the obligations proposed in the Consultation Paper.
- Section D sets out our comments on the approach to the regulation of custody of crypto-assets.

A The need to regulate crypto-assets and services

Key points

There is increasing demand for crypto-assets, and more products and service offerings are emerging that are similar to products and services offered through the financial system. However, it is often unclear whether crypto-assets are a financial product and within ASIC's jurisdiction.

As demand increases, the crypto-ecosystem and the financial system are becoming increasingly integrated. To manage risks to both systems, there is a need for strong and consistent oversight.

Crypto-assets are complex products and are difficult for consumers to fully understand. These difficulties are in addition to the challenges consumers already face when making decisions about their finances. There is a need for regulation designed to ensure consumer protection.

We support the regulation of crypto-assets, and related services, occurring through the application of the financial services regulatory framework in Ch 7. This view is based upon the risks of consumer harm in the crypto-asset ecosystem, as well as the benefits of cohesive regulation of the sector. The token mapping exercise should consider how this can occur, and should also consider whether further consumer protections are necessary for certain types of crypto-assets, including whether speculative or unbacked crypto-assets should be accessible by retail investors.

About ASIC

- 21 ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. Our role under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) is to:
- (a) maintain, facilitate and improve the performance of the financial system and entities in it;
 - (b) promote confident and informed participation by investors and consumers in the financial system;
 - (c) administer the law effectively and with minimal procedural requirements;
 - (d) receive, process and store, efficiently and quickly, information we receive;
 - (e) make information about companies and other bodies available to the public as soon as practicable; and
 - (f) take whatever action we can, and which is necessary, to enforce and give effect to the law.

- 22 ASIC’s vision is a fair, strong and efficient financial system for all Australians. To realise our vision we use all our regulatory tools to:
- (a) change behaviours to drive good consumer and investor outcomes;
 - (b) act against misconduct to maintain trust and integrity in the financial system;
 - (c) promote strong and innovative development of the financial system; and
 - (d) help Australians to be in control of their financial lives.
- 23 ASIC has published guidance in [Information Sheet 225](#) *Crypto-assets* (INFO 225) to help industry and the community understand when financial services laws may apply to crypto-assets. We administer existing regulatory obligations in respect of crypto-assets, or products and services that involve crypto-assets in some way. We engage with industry to ensure that businesses comply with their legal obligations.
- 24 We also publish good practice guidance relevant to other specific situations, such as crypto-assets as underlying assets for ETPs and other investment products.
- Note: see [Consultation Paper 343](#) *Crypto-assets as underlying assets for ETPs and other investment products* (CP 343), [Report 705](#) *Response to submissions on CP 343* *Crypto-assets as underlying assets for ETPs and other investment products* (REP 705) and [Information Sheet 230](#) *Exchange traded products: Admission guidelines* (INFO 230).
- 25 We note that the Consultation Paper indicates ASIC is intended to be the regulator and licensing body for CASSPrs.

Crypto-assets are becoming increasingly mainstream

Crypto-asset use increasing amongst retail investors

- 26 Our surveillance and liaison indicates that a large number of Australians are transacting in crypto-assets. We expect that the number will continue to increase as the products and services offered in the market increases.
- 27 Research conducted for ASIC with a sample of 1,053 Australian investors showed that:
- (a) 44% of total investors surveyed (including those who started during or after March 2020 and those investing for five years or more) owned at least one cryptocurrency in November 2021, with a median of three different cryptocurrencies held. Among those who started investing during or after March 2020, 55% owned at least one cryptocurrency.
 - (b) Overall, male investors were more likely than female investors to report owning at least one cryptocurrency (49% vs 35%); and younger

investors (aged 18-34) were more likely to report owning at least one cryptocurrency (58% vs 46% of those aged 35-54 and 20% of those aged 55 and over).

- (c) Cryptocurrency was the first investment product for 19% of investors overall (i.e. they did not have prior experience in shares or other investment products).
- (d) Of all the investors who held cryptocurrencies, 25% held cryptocurrencies only and 75% held cryptocurrencies in combination with other product types.
- (e) Surveyed investors were asked to indicate the current value (in Australian dollars) of their total investment portfolio (this included any investment properties and self-managed super funds (SMSFs) but excluded their primary place of residence and standard superannuation). Of all investors who held cryptocurrency, the median value of their total investment portfolio was between \$20,000 to \$34,999, with investments in cryptocurrency making up a median of 30% of their portfolios.
- (f) Between March 2020 and November 2021 (a period of increased retail investor participation), 27% of cryptocurrency investors said they had experienced either completely losing the money they had invested in cryptocurrency (10%), or selling their cryptocurrency investment for less than they bought it for (19%), with 2% saying they experienced both.
- (g) Just one in three cryptocurrency owners (34%) considered that they owned products that were risky or speculative.

Source: Forthcoming market research commissioned by ASIC. A nationally representative online survey was conducted with n=1,053 retail investors aged 18 years or over. Quotas were set by age, gender and location using ABS Census data. Fieldwork was conducted 19-30 November 2021. Research participants were active Australian retail investors who had made at least one transaction (trading securities, derivatives or cryptocurrency) since March 2020.

- 28 These indications are consistent with international consumer research: Financial Conduct Authority (FCA) research suggests that public awareness and ownership of cryptocurrencies increased in recent times.

Note: See FCA, [Research note: Cryptoasset consumer research 2021](#), 17 June 2021.

- 29 There are many reasons for increased consumer demand for exposure to crypto-assets. One reason may be advertising by crypto-asset platforms. The International Organization of Securities Commissions (IOSCO) Retail Market Conduct Taskforce noted that some of the increased demand is explained by:

- (a) the ease of access to crypto-asset trading;
- (b) 24-hour online trading; and

- (c) low returns from traditional asset classes.

Note: see IOSCO, [Retail Market Conduct Taskforce Consultation Report](#) (PDF 796 KB), March 2022.

Retail trade in crypto-assets based on ‘speculation’ and the types of offerings are expanding

- 30 A portion of retail trade in crypto-assets may be based on consumer perception that these assets may appreciate in value in the future. Consumers who purchase the assets on this basis are holding the assets in the hope of making a profit on the eventual disposal of the asset, rather than the asset producing cashflow or returns.
- 31 We are also seeing service offerings emerge that mimic traditional financial products. In the Australian market, there is an increasing number of entities looking to provide crypto-asset ‘yield’ products that offer a return on investment (in some cases a fixed percentage return) for purchasing a crypto-token and then ‘staking’ or ‘lending’ the asset with or through the entity. These products may appeal to consumers because of the returns offered. Other entities may offer trading and synthetic exposure to assets. This may involve operating an exchange which serves a similar economic function to a derivative market.

It is often unclear whether crypto-assets offered in the market are financial products

- 32 Whether crypto-assets, or related products and services, involve financial products and services, and therefore require an AFS licence, requires complex legal analysis. Crypto-assets are not a homogenous asset class and each crypto-asset raises different considerations. Different conclusions may be reached on whether a product is regulated even where it functions in a similar way or presents similar risks to a financial product. Whether or not a product is regulated may not be obvious to a consumer, particularly if the consumer considers the product or service is fulfilling a similar function to a financial product.
- 33 In our submission to the Senate Inquiry into Digital Currency in December 2014, we noted some of the challenges with classifying unbacked digital currencies, such as bitcoin, as financial products. The reasons for this are because a person does not ‘make a financial investment’ when purchasing a digital currency, in the same way that a person does not ‘make a financial investment’ when purchasing real property or gold bullion. We also noted that a digital currency is not a facility through which a person may make non-cash payments, because digital currencies do not afford the holder any right to make a payment: digital currencies can generally only be used as a means of payment or exchange between willing parties.

- 34 Since 2014, many more crypto-assets are being traded and services offered that raise additional issues to those listed above. The crypto-asset ecosystem has become more complex, and it is increasingly difficult to clearly demarcate these boundaries.

FCA crypto-asset consumer research—attitudes towards crypto and patterns of usage

- 35 An FCA research note indicates that while many crypto users can identify a correct definition of ‘cryptocurrency’, a significantly lower number of consumers believed that they have a good understanding of how cryptocurrencies and the underlying technology works.

Note: See FCA, [Research note: Cryptoasset consumer research 2021](#), 17 June 2021.

- 36 The same research found that in 2021 the most commonly selected reason by consumers for buying cryptocurrencies was ‘as a gamble to make or lose money’, but this percentage has decreased since 2020. The next most popular reasons were ‘as part of a wider investment portfolio’, ‘instead of buying shares or other financial instruments’ and ‘as part of my long-term savings plan eg pension’ and these numbers have increased since 2020.

- 37 The FCA research note expressed one indicator of potential harm as investing in cryptocurrencies in the mistaken belief that regulatory protections are available. The same research found that those wrongly believing they had regulatory protection were much more likely to have been led/encouraged to buy due to advertising.

Note: See FCA, [Research note: Cryptoasset consumer research 2021](#), 17 June 2021, Chart 16 and associated text.

Crypto-ecosystem is becoming more integrated with the financial system

- 38 The financial system and the crypto-ecosystem are increasingly intertwined:
- (a) Established custodians are extending their service offerings to crypto-assets.
 - (b) Stockbroking and wealth management firms are offering crypto-related products and services to customers across institutional, wholesale and retail markets.
 - (c) Institutional investment is occurring in the crypto-ecosystem.
 - (d) Investment banks are extending research coverage to crypto-assets and developing their own stablecoins.
 - (e) There are a range of crypto-related derivatives, including futures and contracts for difference.

- (f) Financial instruments are used to form the pool of reserve assets for stablecoins.

39 It is increasingly difficult to draw a clear boundary between the financial system and the crypto-ecosystem. The authors of a Bank for International Settlements (BIS) working paper recently noted that:

[A] new set of market participants, consisting of crypto exchanges and ancillary entities (eg wallet providers), has arisen that deserves closer regulatory and supervisory scrutiny. These new intermediaries not only serve retail clients, but also other institutions, such as hedge funds and investment funds. The exponential growth of this industry requires a proactive, cross-sectoral and forward-looking approach to regulating and overseeing an emerging crypto financial system. Cryptocurrency intermediaries, including crypto exchanges, should be subject to the same types of regulation and oversight as intermediaries in economically equivalent asset classes, including with regards to financial stability, consumer and investor protection, and standards to AML, including know-your-customer requirements, and CFT. The purportedly decentralised nature of cryptocurrencies does not negate the need for these critical public policy functions.

...

[T]he potential for many interlinkages between novel cryptocurrency intermediaries and the mainstream financial system requires a comprehensive approach to assessing and mitigating risks. Growing demand for cryptocurrencies could increasingly see traditional nodes of the financial system—such as banks and institutional investors—relying directly and indirectly on new nodes of the cryptocurrency ecosystem, such as crypto exchanges. A recurring lesson from the history of financial crisis is that risks in the ‘shadow’ corners of the financial system can quickly find their way to established and regulated institutions.

...

[T]he fundamental policy choice is to either focus on a framework that allows such interlinkages but adamantly enforces a more level playing field with regard to the regulation and supervision of financial services. Alternatively, policy could treat cryptocurrencies as a self-contained system that can develop in parallel with the mainstream financial system but does not interlink with it. Developments to date, including the gradual, but increasing, prevalence of established financial institutions in cryptocurrency activity, suggests that separating both systems could prove challenging at a global level, making the former solution inevitable.... In practice, this would mean applying more stringent regulatory and supervisory oversight of crypto exchanges with regard to the provision of financial services (eg intraday credit, margin financing, provision of custody services), while applying a conservative bank prudential regulatory treatment for cryptocurrency exposures.

Note: See BIS, Working Paper No. 1013, [Banking in the shadow of Bitcoin? The institutional adoption of cryptocurrencies](#) (PDF 1.37 MB), by Raphael Auer, Marc Farag, Ulf Lewrick, Lovrenc Orazem and Markus Zoss, May 2022.

40 Financial services regulation should evolve to reflect recent developments. To that end, principles and lessons from financial services regulation are relevant to the emerging crypto-asset sector. We believe protections for

investors in financial regulation should not be ring-fenced merely because the framework in Ch 7 was not developed with crypto-assets in mind.

- 41 More crypto use cases will develop over time, and some of these uses may have less direct linkage to the financial sector or may not warrant a regulatory response. However, the application of distributed ledger technology in another sector does not diminish the interaction between finance and the crypto-ecosystem.
- 42 In our view, innovation is best fostered by promoting trust and confidence in markets, including by providing strong consumer protections. The application of regulation in a proportionate manner, to address identified harms or problems, supports trust and confidence.

Consumer harms

- 43 We set out some examples from the crypto-asset environment where consumer harm may occur.

Table 1: Examples of situations where consumer harm may occur

Consumer harm situation	How do we respond to the consumer harm in this submission?
Private keys are difficult to custody and may be lost.	<p>We support regulatory obligations on custody arrangements of crypto-assets: see Section D.</p> <p>We draw upon our experience with custody in financial services, and also take into account the nature of crypto-assets.</p>
Crypto-asset service provider may cause losses to their customers through misconduct, incompetence or lack of resilience.	<p>We support additional organisational and staffing requirements for CASSPrs, as well as requirements for compensating consumers: see paragraphs 144–150.</p> <p>Even organisations with good staff and management may enter financial distress. It is important that these risks be addressed when designing a regulatory framework: see paragraphs 156–157.</p>
Consumers may over-invest in products, in a manner that is not aligned with their objectives and risk appetite. Crypto-related advertising and user experience design may harness numerous behavioural techniques, which contribute to an exposure greater than what a consumer is prepared to lose.	<p>We support regulatory requirements for advice about crypto-assets: see paragraph 153.</p> <p>We support a prohibition on misleading advertising and other harmful practices prohibited under the ASIC Act: see paragraph 151.</p> <p>Our submission also provides context and examples from other countries for consideration:</p> <ul style="list-style-type: none"> • crypto-asset trading platforms can play a gatekeeping function (see paragraph 186(a)); • the UK is looking to bring qualifying crypto-assets within the financial promotions framework (see paragraph 166); and • crypto-asset trading platforms may implement some parameters such as investment limits (see paragraph 164).

Consumer harm situation	How do we respond to the consumer harm in this submission?
Consumers may trade in markets that are not fair or transparent. Manipulative activity may occur on markets such as ‘pump and dump’ and ‘wash trades’. See paragraph 181 regarding concerns about market integrity.	The first necessary precondition is clean data: see paragraph 172. If exchanges and trading platforms are licensed, we support a holistic regulatory framework that addresses this risk: see paragraphs 170–188 and 194–200.
Crypto-assets may be used as part of a scam or fraudulent activity.	We support obligations on CASSPrs to minimise the risk of scams to their consumers. We provide comments on the proposed obligation to respond in a timely manner to ensure scams are not sold through the platform: see paragraphs 219–221.

US executive order

- 44 Similar harms to consumers are being observed in the United States, and agencies have been tasked to develop recommendations for a regulatory regime for crypto-assets with these concerns in mind. The [Executive Order on Ensuring Responsible Development of Digital Assets](#) (9 March 2022) expressed that:
- The rise in use of digital assets, and differences across communities, may also present disparate financial risk to less informed market participants or exacerbate inequities. It is critical to ensure that digital assets do not pose undue risks to consumers, investors, or businesses, and to put in place protections as a part of efforts to expand access to safe and affordable financial services.

Problems with understanding crypto-assets

- 45 The complexities inherent in many crypto-assets make them difficult to understand. Crypto-assets have diverse features and functionalities and may grant the holders different substantive rights. These features, functionalities and rights can change over time, and are typically set by the underlying code for that asset and its blockchain.
- 46 Consumers may not have the ability to access or understand underlying code for an asset and blockchain in order to learn about the features and rights attached to an asset. A consumer’s decision may instead rely on other plain English explanations for how the asset operates. These explanations may be:
- (a) set out in white papers, online forums, financial publications and websites, or marketing material;
 - (b) provided by ‘advisers’ or commentators; or
 - (c) provided by the exchanges on which the assets are traded.
- 47 However, these explanations are not authoritative and may not reflect the underlying code correctly or how the asset or service is intended to operate.

An additional layer of complexity is that the actual interest a consumer acquires when they transact on a crypto trading platform may differ from the actual crypto-asset (unless, for instance they have and exercise a right to request an asset be transferred to themselves). These matters increase the chance that consumers will underestimate the risks of what they are placing their money in.

- 48 While terminology differs in financial regulation frameworks across the world, there are common approaches to addressing risks associated with consumer decision-making:
- (a) *Disclosure*: Mandatory disclosures which set out features of financial products are common to most financial regulation frameworks. Issuers are required to provide explanations of core product features and risks, and are generally bound by representations that they make in disclosure documents. Service providers are also required to make disclosures about the nature of their services, and the risks posed to consumers.
 - (b) *Advice*: Advice is generally regulated to ensure that consumers receive guidance and recommendations of a minimum quality. In Australia, financial product advice is regulated: see s766B of the Corporations Act. There are very limited regulatory levers to promote quality advice in relation to crypto-assets that are not financial products.
 - (c) *Promotions*: Regulatory requirements can ensure that promotional activity for high-risk products carry appropriate risk warnings and contain no inducements to invest: see paragraph 165. Regulation can also set a standard that advertising must be clear, balanced and fair.
 Note: See CNMV, [Crypto-asset advertising](#), Spanish National Securities Market Commission, 10 January 2022.
 - (d) *Product suitability requirements*: Some regulatory regimes impose obligations to ensure consumers receive products which meet their needs. An example of this nature is the design and distribution obligations: see [Regulatory Guide 274 Product design and distribution obligations](#) (RG 274).

Regulation of crypto-assets and service providers

- 49 We consider that there is a strong case for regulation of crypto-assets and service providers to address the problems and risks highlighted in this submission.
- 50 We support this occurring through the Ch 7 framework—that is, regulating crypto-assets as financial products, and related services as financial services. We consider that this will lead to better consumer outcomes and avoid legislative complexity. The reasons for our view are set out below and in Section B. We note that this approach would not completely remove the risk

of consumer losses; that is not the objective of the financial services regulatory framework ASIC administers.

Crypto-assets and services should be regulated through Ch 7

- 51 The Consultation Paper proposes a model where some crypto-assets that meet the definition of ‘financial product’ are regulated through the Ch 7 framework in the Corporations Act. The remainder of crypto-assets and services that do not involve financial products would be regulated through the proposed CASSPr licensing regime, which would impose fewer obligations.
- 52 However, we consider that many crypto-assets and service offerings have characteristics that are substantially more similar to financial products than they are to traditional consumer goods, and are used as such by many consumers. Many of the factors which justify specific regulation of financial products and services are also present in the context of crypto-assets, such as the inherent complexity of what is being sold, as well as the long-term financial implications for consumers if the products and services they receive are mis-sold or of poor quality.
- 53 We consider it would be unrealistic for consumers to be expected to differentiate between financial and non-financial product crypto-assets and services, and such an approach creates a complex regulatory environment for all parties: see Section B.
- 54 Inconsistent regulation and oversight of the crypto-ecosystem risks vulnerabilities and regulatory gaps emerging. Risks in some areas of the crypto-ecosystem have the potential to affect other areas, or the broader financial system, particularly as interlinkages deepen. We therefore think that there is a strong case for consistent regulation and oversight of crypto-assets. The most suitable framework for doing so is the Ch 7 framework.
- 55 Chair Rostin Behnam of the Commodity Futures Trading Commission in the United States commented on ensuring that ‘the standards that American investors have come to expect from our financial markets are equally present in digital markets’. Chair Behnam noted that there are unique elements of the cash market for crypto-assets when compared to other commodity cash markets, and these elements contribute to the case for regulatory oversight. The factors include:
- (a) The cash market for crypto-assets is currently characterised by a high number of retail investors mostly engaged in price speculation.
 - (b) The speculative fervour around crypto-assets has led many investors to take on high levels of leverage when trading, leading to heightened

price volatility, often exacerbated by cascading liquidations during price downturns.

- (c) Many investors are entrusting their digital assets to the platforms on which they trade, and are not differentiating this type of custody arrangement from that offered by the traditional regulated banking industry. The complexities around securing and transacting in digital assets, particularly around custody, have resulted in numerous platforms losing funds to hacks, exploits and poor cyber security.

Note: See Commodity Futures Trading Commission, [Testimony of Chairman Rostin Behnam regarding ‘Examining digital assets: Risks, regulation, and innovation’](#) before the US Senate Committee on Agriculture, Nutrition and Forestry, 9 February 2022.

- 56 The recent volatility in crypto-asset markets caused by the collapse of the algorithmic stablecoin Terra further underscores the need for oversight and strong regulatory standards to ensure consumer protection and market integrity. In response to these developments the G7 in their most recent Communiqué urged the Financial Stability Board to:

... advance the swift development and implementation of consistent and comprehensive regulation of crypto-asset issuers and service providers, with a view to holding crypto-assets, including stablecoins, to the same standards as the rest of the financial system.

Note: See US Department of the Treasury, [G7 Finance Ministers and Central Bank Governors Meeting Communiqué](#), press release, 18–20 May 2022.

Additional consumer protections may be necessary for speculative crypto-assets

- 57 As we note above, many retail investors are engaging in speculation that crypto-assets will appreciate in value, and they will be able to make a profit on the eventual sale of the asset.
- 58 ‘Speculative’ or ‘unbacked’ crypto-assets inherently carry risk for retail investors: crypto-markets are volatile, affected by a number of factors and prices can fluctuate significantly. For example, the price of bitcoin had fallen from a record high price of USD\$68,000 in November 2021, to a 52-week low of under USD\$21,000 in June 2022, which was less than a third of its peak price. These markets also have a high number of retail investors participating alongside sophisticated financial institutions or investors.
- 59 The volatility and speculative nature of these assets may make their purchase unsuitable for retail investors as a standalone investment if it is not part of a diversified strategy, and if the investor is unable to bear losses in the medium term. Government may wish to consider the extent to which any regime could implicitly encourage speculation by retail investors in such assets. Regulating crypto-assets and licensing crypto-asset service providers

may give the impression that purely speculative assets are appropriate for investment purposes.

- 60 These concerns were recently highlighted by Chair Randell of the FCA, who in the context of the proposed UK regime for regulating ‘speculative’ crypto-assets urged for a certain amount of ‘realism’ in what the regime should be designed to achieve:

But what would success look like if we also took on regulation of the issue and trading of purely speculative crypto tokens? Should people be encouraged to believe that these are investments, when they have no underlying value? When the price of Bitcoin can readily halve within six months, as it has done recently, and some other speculative crypto tokens have gone to zero? Should a couple with retirement savings of £250,000, which would buy them an annuity of perhaps £6,000 at age 65, be treated as ‘high net worth’ and encouraged or permitted to speculate on crypto or other high-risk products with these savings? Should people without any significant savings or financial experience be encouraged or permitted to buy speculative crypto at all?

If the success of the FCA in regulating speculative crypto is going to be judged, and in due course no doubt it will be, these fundamental questions need to be properly and openly debated and answered well before responsibility passes to the FCA, rather than afterwards.

The project to bring speculative crypto into regulation also needs a workable operational plan which the FCA—and other regulators where appropriate—are fully signed up to delivering. That means realism about how long we need to prepare. Realism about how far many crypto firms will have to improve before they can be authorised. Realism about how consumers will actually behave online, supported by testing. And realism about the challenges of supervising a decentralised global activity which is an increasingly attractive conduit for organised financial criminals and money launderers.

Note: See FCA, [Listening up to level up: Regulating finance for the whole of the UK](#), speech by Charles Randell, Chair of the FCA, 20 May 2022.

- 61 A light touch or non-existent regime may create the misleading impression that these assets are less risky, do not require regulation or oversight and are appropriate for anyone to purchase without restriction. It may also encourage a ‘shadow’ industry to emerge in competition with the financial system, with few or none of the same protections.

- 62 Based on this, we think there is a strong case for applying additional consumer protections beyond those proposed in the Consultation Paper.

The token mapping exercise should consider whether additional consumer protections are necessary for different types of crypto-assets

- 63 The ‘token mapping’ exercise, which is designed to categorise different types of crypto-assets, has not yet substantively commenced.

- 64 The categorisation of different crypto-assets is a foundational piece of work critical to the design of the regulatory framework for crypto-assets and related services. As such, the token mapping exercise should consider how different crypto-assets should be categorised for regulatory purposes: see paragraphs 94–95. Regulation may need to apply differentially to crypto-assets, as it does in financial regulation more broadly. For example, an asset-backed stablecoin raises different regulatory considerations to a speculative form of crypto-asset or a crypto-yield product.
- 65 ASIC considers that the token mapping exercise should also assess whether additional consumer protections should apply to certain types of crypto-assets. This should include whether, or in what circumstances, retail investors should be allowed to purchase unbacked speculative crypto-assets.

Policy objectives

- 66 We consider that the policy objectives of any regulatory requirements for crypto-assets or CASSPrs should closely align with the objectives of Ch 7. The services provided by CASSPrs carry many of the same risks as financial services, and are seen by consumers as serving a similar function. Greater alignment (relative to the proposal in the Consultation Paper) will make the objectives of regulating the crypto-ecosystem clearer and more consistent.
- 67 The Consultation Paper notes the following policy objectives for the proposed CASSPr licensing regime:
- (a) to minimise the risks to consumers from the operational, custodial and financial risks facing the use of CASSPrs—this will be achieved through mandating minimum standards of conduct for business operations and for dealing with retail consumers to act as policy guardrails;
 - (b) to support the anti-money laundering and counter-terrorism financing (AML/CTF) regime and protect the community from the harms arising from criminals and their associates owning or controlling CASSPrs; and
 - (c) to provide regulatory certainty about the policy treatment of crypto-assets and CASSPrs, and provide a signal to consumers to differentiate between high quality, operationally sound businesses, and those that are not.
- 68 Separately, the Consultation Paper also identifies the following regulatory objectives that have informed the design of the proposed regime:
- (a) ensuring that regulation is fit for purpose, technology neutral and risk-focused;
 - (b) creating a predictable, light touch, consistent and simple legal framework;

- (c) avoiding undue restrictions;
- (d) recognising the unique nature of crypto-assets; and
- (e) harnessing the power of the private sector.

69 These objectives set out above are expressed differently from the objectives in s760A of Ch 7 of the *Corporations Act 2001*, but have some of the same themes. However, not all of the themes from the Ch 7 objectives are included, while others have reduced prominence, such as ensuring ‘fairness, honesty and professionalism by those who provide financial services’, or ‘confident and informed decision making by consumers of financial products’.

Note: The objectives of Ch 7 are:

- ‘(a) confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services; and
- (aa) the provision of suitable financial products to consumers of financial products; and
- (b) fairness, honesty and professionalism by those who provide financial services; and
- (c) fair, orderly and transparent markets for financial products; and
- (d) the reduction of systemic risk and the provision of fair and effective services by clearing and settlement facilities.’

70 To ensure greater alignment, we think the objectives could be reframed such that any regulatory obligations are intended to:

- (a) provide confidence to consumers in their dealings with CASSPrs;
- (b) facilitate informed decision making by consumers of crypto-assets or crypto-asset services;
- (c) facilitate efficient, flexible and innovative provision of crypto-asset services;
- (d) facilitate the provision of suitable crypto-assets to consumers;
- (e) ensure fairness, honesty and professionalism by those who provide crypto-asset services;
- (f) promote fair, orderly and transparent markets in crypto-assets;
- (g) reduce systemic risk and ensure the provision of fair and effective crypto-asset services; and
- (h) protect consumers from illicit activity that may involve crypto-assets or crypto-asset services.

71 These objectives listed above could be the objectives of a bespoke regime of the kind proposed in the Consultation Paper, or could inform the inclusion of crypto-assets within the financial services regulatory framework.

B Definition of ‘crypto-asset’, and the regulatory perimeter

Key points

Regulating crypto-assets as financial products

We think crypto-assets should be defined as financial products to promote cohesive regulation and avoid legislative complexity.

ASIC considers that ‘crypto-asset’ should be defined broadly. In order to avoid unintended or undesirable consequences, there would need to be scope to carve certain assets out of this definition, as well as broad modification powers.

Further consideration is needed about how crypto-assets should be included as financial products. This includes whether crypto-assets should be a single specific type of financial product, or multiple types of financial products dependent on their features, and how those definition(s) should interact with existing definitions of different types of financial products. The token mapping exercise presents an opportunity to consider this topic further.

A wider range of crypto-asset services should be regulated

We think that additional services to those proposed should be regulated, which reflect the full range of service offerings that a CASSPr might provide. Other jurisdictions are moving to regulate a wider range of services than is covered by the proposed CASSPr definition, including the provision of ‘advice’ in relation to crypto-assets and certain other services connected to crypto-asset trading.

Additionally, the token mapping exercise should explicitly consider how issuers of crypto-assets should be regulated, to avoid regulatory gaps.

Definition of ‘crypto-asset’

- 72 The Consultation Paper proposes to use the definition of crypto-asset that is set out in [INFO 225](#). That definition sets out that a crypto-asset is:
- ... a digital representation of value or rights (including rights to property), the ownership of which is evidenced cryptographically and that is held and transferred electronically by:
- (a) a type of distributed ledger technology; or
 - (b) another distributed cryptographically verifiable data structure.
- 73 This definition is used to help administer the AFS licensing regime for managed investment schemes. It allows an applicant to select a new asset kind called ‘crypto-assets’ when applying for a new AFS licence, or a

variation to an existing licence to operate a managed investment scheme. This term is intended to be a catch-all phrase for all types of crypto-assets that are not financial products; where a crypto-asset is a financial product, ASIC requires applicants to select the relevant kind of financial product as the ‘asset kind’ for the purposes of their application.

74 Because the term crypto-asset is used in an administrative context, it can be updated when there are industry developments.

75 However, there are aspects of the definition which, while reflective of current industry practices, may not always be reflective of those practices if there are changes in the types of technology used. For example, the Financial Action Task Force (FATF) defines a virtual asset without reference to cryptography, blockchain or distributed ledger technology. It instead focuses on the idea of ‘digital representation of value’ that can be ‘traded or transferred’, and can be used for ‘payment or investment purposes’.

Note: See FATF, [Updated guidance for a risk-based approach to virtual assets and virtual asset service providers](#), October 2021 (FATF guidance).

What should a proposed definition of ‘crypto-asset’ cover?

76 We note the Consultation Paper has suggested defining crypto-assets for the purposes of all regulatory frameworks, not just the proposed CASSPr regime. We think the definition of crypto-assets should appropriately reflect the categories of products in relation to which services are intended to be regulated. Additionally, the scope of the regulatory regime should reflect the risks that can arise, and ensure similar risks are addressed in similar ways.

77 If the definition is intended to refer to all forms of digital representations of rights or value, regardless of whether that digital representation has some other legal characterisation (such as a financial product), then a comprehensive definition like the one included in [INFO 225](#) may be desirable. If it is not intended to refer to all forms of digital representations of rights or value (such as if it does not apply to financial products, or certain types of tokens), then that should be clear on the face of the definition.

78 We understand that the proposed CASSPr licensing regime is intended to apply obligations in at least two distinct ways:

- (a) it will apply general obligations for regulated services provided to retail clients in relation to non-financial product crypto-assets; and
- (b) it will apply custody obligations for *all* crypto-assets, regardless of whether it is a financial product or not.

79 The second intended application would require a comprehensive definition of crypto-assets. However, the first intended application is less clear and

depends both on meeting the definition of ‘crypto-asset’ and not having another legal characterisation as a ‘financial product’.

- 80 We consider that the way we have defined crypto-assets in INFO225 comprehensively captures assets currently in the market. However, advances in technology or the rapid pace of international developments may make it desirable to amend the definition from time to time to ensure that new products do not fall outside the regulatory perimeter. It may be necessary to consider greater alignment with the definitions used in FATF guidance, which does not refer to specific aspects of technology.

Note: FATF, [Updated guidance for a risk-based approach for virtual assets and virtual asset service providers](#), October 2021.

The proposed regulatory perimeter and types of regulated services

Scope of the Consultation Paper

- 81 The Consultation Paper indicates that the scope of the proposed CASSPr licensing regime is CASSPrs that are centralised and provide services to retail investors and consumers.
- 82 We broadly agree that regulation and protections should be proportionate to different types of investors. However, the complexity of some products in the crypto-ecosystem indicates that many protections in this space are likely to be necessary for most Australian consumers. Additionally, the general obligations associated with holding a licence (such as the requirement to act efficiently, honestly and fairly, and the requirement to maintain competence to provide the regulated services) would also support good outcomes for non-retail consumers.
- 83 ASIC encourages consideration of a risk-based approach to licensing and regulation as with the financial services regulatory framework in Ch 7. That framework does not provide a blanket exemption from licensing for all wholesale business, but rather provides:
- (a) scope for varying intensity of regulation depending on the activities of the entity; and
 - (b) some carve-outs from licensing, which are not based solely on interaction with non-retail consumers.

Decentralised finance (DeFi)

- 84 We understand that DeFi is not expressed as a focus of the Consultation Paper. As a result, we will be in a position to provide a more comprehensive

focus on DeFi in any relevant future consultation process. ASIC’s starting position is that the following principles may help with consideration of how to address decentralised offerings:

- (a) *Regulatory consistency*: the same regulatory principles (acknowledging differences in implementation) should be applied to similar risks and activities.
- (b) *Substance over form*: the substance of an arrangement should be key for determining how it is regulated, rather than a statement that it is decentralised.
- (c) *Presence of linkages between centralised and decentralised offerings*: there are linkages between centralised venues and DeFi which make it difficult to silo the regulated space. For example, users of centralised service providers may have an app for their exchange that can also facilitate access to decentralised arrangements.

Crypto-assets should be regulated as financial products to promote cohesive regulation and avoid legislative complexity

85 We consider that the CASSPr licensing regime proposed in the Consultation Paper would lead to substantial complexity, and that further requirements to ensure consumer protection are warranted. This is because there would be parallel regimes regulating different parts of the crypto-ecosystem.

86 The most direct way to ensure consistent consumer protection outcomes across the whole of the sector is to regulate crypto-assets and services as financial products and services. This could be achieved by amending the Corporations Act (and other relevant legislation) so that crypto-assets are financial products. The token mapping exercise is an important input for considerations about how this should occur. We note that this approach reflects:

- (a) the similarities between the case for regulation of crypto-assets and financial products;
- (b) functional similarities between crypto-assets and financial products; and
- (c) substantial regulatory complexity associated with parallel regulatory regimes.

87 In our view, many crypto-assets and service offerings have characteristics that are more similar to financial products than they are to more traditional consumer goods. For example, crypto-assets:

- (a) are accessed or dealt with through market intermediaries or platforms;
- (b) are traded readily on exchanges;

- (c) are entrusted to a custody service provider to manage the safekeeping of the asset on behalf of the client;
- (d) have a range of services offered in relation to the assets, such as ‘advice’ about which assets to buy;
- (e) are often purchased based on their perceived value and used as an ‘investment’, rather than being ‘consumed’;
- (f) are complex to understand;
- (g) may be used as a means of payment or exchange between willing parties; and
- (h) may be purchased as part of a client’s broader financial strategy.

88 However, because of the technical features of crypto-assets, it may be unclear whether they meet the definition of a financial product. These distinctions are not obvious or clear to consumers, and often depend on an analysis of the code that underpins particular crypto-assets.

89 Increasingly, consumers place money in crypto-assets as an asset class alongside other financial products as part of their financial strategy. A consumer may take appropriate caution in that they check whether they are interacting with a licensed entity. However, it is unrealistic to expect every consumer to readily understand that there would be a difference in the level of protection based on whether the service offering is regulated under existing financial regulation or the CASSPr licensing regime. Moreover, we do not consider that there should necessarily be a distinction in the level of consumer protection between those regimes.

90 Part of the original rationale for the AFS licensing regime was a response to the disparate financial regulation regimes that had emerged over time for different types of products. These were replaced with what was to be a single licensing requirement, which harmonised these regimes. This change helped ensure that the protections provided to consumers were consistent, markets were not fragmented and they were consistently supervised. Consistent regulation allows consumers to confidently participate in markets without being concerned about how they will be treated by intermediaries or whether different standards apply.

91 The differences between the proposed CASSPr licensing regime and the AFS licensing regime do not reflect the levels of risk that are inherent in the services that would be covered by the regimes. The proposed CASSPr licensing regime contains relatively few of the protections that are embedded in the Ch 7 licensing regime. ASIC’s view is that additional protections may be required: see Section C.

92 Crypto-assets are a relatively risky investment: asset prices are highly volatile, markets currently are largely unregulated, there is an increased

prevalence of scams that use crypto-assets, and there are potential risks from mismanagement of the safekeeping of crypto-assets. However, a ‘light touch’ regime may create a false impression to consumers that these assets and services are somehow less risky than other more traditional financial products.

What type of financial product would a crypto-asset be?

- 93 Ch 7 of the Corporations Act has both a functional approach to determining if something is a financial product (e.g. a facility through which a person makes a financial investment), and also specifically includes and excludes some product types. Depending on what type of financial product an asset is classified as, different types of obligations may apply to the asset.
- 94 We think that one or more specific inclusions for crypto-assets could be made to bring crypto-assets within Ch 7. This could be subject to exclusions for certain types of assets that are not used in a similar way to financial products. In designing carve-outs, it is important to focus on substance and not only the name of a crypto-asset. We note that even for assets that may not be used like financial products, it would be important to apply appropriate custody obligations on entities that are providing a custody service for those assets.
- 95 In the context of the token mapping exercise, we think that consideration should be given to how such specific inclusion(s) may be crafted. Two things that should be explicitly considered are:
- (a) How would a definition of crypto-asset interact with other definitions in Ch 7? For example, where a crypto-asset also meets the definition of derivative, should it be legally classified as a derivative or a crypto-asset?
 - (b) What types of crypto-assets should be excluded from the regulatory perimeter?
- 96 Changes may be needed to these definitions from time to time to ensure that the regulatory regime is future proof, and that regulation continues to apply appropriately to the products and services available to consumers. In that regard, powers such as the ability to make regulations prescribing certain crypto-assets to be, or not be, financial products, may be useful. These powers are already a part of the Ch 7 framework: see s764A(3) and s765A(3) of the Corporations Act. These powers may also assist to ensure that regulation does not apply in situations where it is not warranted.

Ch 7 definitions and obligations likely need to be adjusted regardless of whether a separate CASSPr regime is implemented

- 97 The existing Ch 7 definitions and concepts pre-date the development of the crypto-asset sector. Even if a separate CASSPr regime was established and some crypto-assets were not regulated as financial products, it is likely that some amendments to Ch 7 would be required to more clearly define assets that are functionally similar to financial products as financial products. For some crypto-assets brought within or already subject to the Ch 7 regime, amendments may also be required to account for differences in how crypto-asset markets operate, whether certain types of crypto-assets are ‘issued’, and how and when disclosure documents are required to be prepared and given.
- 98 Recognising that amendments to Ch 7 are likely unavoidable, in our view it makes sense to deal with these issues holistically, rather than risking fragmented regulatory approaches.

Having a separate CASSPr licence will likely require entities to hold an AFS and CASSPr licence

- 99 Because the proposed CASSPr licensing regime is intended to operate in tandem with the licensing regimes under Ch 7, it would make administration of those regimes more complex. For example, entities that already have an AFS licence and intend to offer crypto-asset services would need to understand the new regime, how the regime interacts with their current service offerings, and potentially seek a second licence. These entities may do so out of caution because it may not always be clear whether or not particular products are financial products. The greater the differences between the regimes, the greater the legal complexity in which CASSPrs will operate.

The financial services law is already complex, and adding in an additional licensing regime would add to this complexity

- 100 We consider that the creation of a parallel licensing and conduct regime, the application of which depends on a product’s status as a financial product, would create significant complexity. As noted above, whether a crypto-asset is a financial product requires a complex assessment and is often unclear.
- 101 This additional complexity could be inconsistent with recent developments. The Australian Law Reform Commission (ALRC) has commenced an Inquiry into the potential simplification of the financial services laws. The Inquiry is part of the Government’s response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry,

which favoured simplification of the financial services law to ensure its intent is met.

Having separate regimes may lead to misalignment in regulated activities

- 102 The Consultation Paper proposes that the regulated services (in addition to the services regulated for AML/CTF purposes and custodial obligations) will be ‘brokering’, ‘dealing’ or ‘operating a market’. Some of these terms such as ‘brokering’ are not directly defined in Ch 7 (although brokers are required to be licensed), and it is unclear whether the other terms such as ‘dealing’ or ‘operating a market’ are intended to have equivalent meanings or cover equivalent services.
- 103 By way of contrast, the Ch 7 regime applies to a broader range of regulated services. The AFS regime applies to financial services, which include, amongst other things:
- (a) providing financial product advice;
 - (b) dealing in a financial product;
 - (c) making a market for a financial product;
 - (d) operating a registered scheme; and
 - (e) providing a custodial or depository service.
- 104 Section 791A of the Corporations Act also requires that a person that operates a financial market in this jurisdiction must have an Australian market licence, or be exempt from holding a licence.
- 105 There is likely to be overlap between the services described in the Consultation Paper and the services regulated under Ch 7. In some cases, a service referred to in the Consultation Paper may be substantially the same as a service regulated under Ch 7, while in other cases they may include aspects of multiple different financial services.
- 106 If the proposed services do not have equivalent meanings to their AFS and market licence counterparts, services that are provided under one regime would very likely have a different legal classification to the same or similar services provided under the other regime. This would add complexity to the regulatory environment, particularly for CASSPrs that possess both an AFS licence and a CASSPr licence, and different legal obligations could apply as a result. This complexity would be in addition to the complexity which results from the difficulty of determining whether or not a particular asset is a financial product.
- 107 This complexity could be mitigated by relying on the Ch 7 regime to impose regulatory requirements in respect of crypto-asset services.

It will be more complex for consumers to differentiate between financial products and non-financial products traded on a platform

108 Parallel licensing regimes may also result in complexities from a consumer or user point of view. To meet their regulatory obligations under the AFS licensing regime, CASSPrs may be required to present those crypto-assets classified as a financial product differently from how non-financial product crypto-assets are presented. Platforms may also be prevented from accepting commissions from issuers for some products that are promoted on their platform, but not others.

The greater the difference between the CASSPr and AFS regimes, the greater the complexity

109 The proposed CASSPr licensing regime would impose fewer obligations than the AFS licensing regime. This would increase the complexity of the regulation of crypto-assets and related services, as there will be a significant difference in regulation depending on which regime applies. The differences between the regimes would create opportunities for regulatory arbitrage.

110 For the reasons set out in Section A, we consider that a significant number of crypto-assets that are currently offered should be regulated as financial products. We also consider that the regulatory ‘default’ for crypto-asset service offerings should be that they are regulated either as, or in a similar way to, financial services.

Blockchain and distributed ledger technology does not remove certain forms of risk in CASSPr service provision

111 The Consultation Paper states that there may be reduced risks to consumers because of the application of blockchain and distributed ledger technology, and that this may justify differential regulation. Many CASSPrs operating a platform may not directly allow retail consumers to interact with or have transactions directly recorded on the blockchain. An exchange may choose not to record a transaction on the blockchain because of transaction fees and delays associated with the validation process. This issue was highlighted in a recent working paper from the Bank for International Settlements:

Instead of relying on a trust-free—i.e. on-chain—environment, a new set of agents has come to the fore that is offering convenience, market access, transaction scale and liquidity to these markets in much the same manner as in commercial banking and securities trading, albeit without the same degree of regulatory and supervisory oversight.

Note: See BIS, Working Paper No. 1013, [Banking in the shadow of Bitcoin? The institutional adoption of cryptocurrencies](#) (PDF 1.37 MB), by Raphael Auer, Marc Farag, Ulf Lewrick, Lovrenc Orazem and Markus Zoss, May 2022.

In this situation, the risks to consumers from the provision of services by the CASSPr are not reduced.

- 112 Whether any risks are in fact reduced will depend on how the technology is used in any given product or service offering, and how products and services evolve over time. To the extent that CASSPrs are performing a similar function to services that are regulated through the AFS licensing regime, it follows that they should be regulated in the same way and that similar levels of protection should be afforded to consumers.

The definition of ‘CASSPr’ and the types of service that should be regulated

- 113 The Consultation Paper notes that a CASSPr will be defined as:
- Any natural or legal person who, as a business, conducts one or more of the following activities or operations for or on behalf of another natural or legal person:
- i. exchange between crypto assets and fiat currencies;
 - ii. exchange between one or more forms of crypto assets;
 - iii. transfer of crypto assets;
 - iv. safekeeping and/or administration of virtual assets or instruments enabling control over crypto assets; and
 - v. participation in and provision of financial services related to an issuer’s offer and/or sale of a crypto asset.
- 114 This is based on the definition included in FATF, [*Updated guidance for a risk-based approach for virtual assets and virtual asset service providers*](#) (FATF guidance), issued in October 2021. The FATF definition is not limited to ‘secondary’ services that may be provided in relation to crypto-assets, and is based on the definition of a ‘virtual asset service provider’ (VASP). This limitation to ‘secondary’ services does not appear on the face of the proposed CASSPr definition.
- 115 We agree that entities that provide the above services should be captured to ensure that there is appropriate compliance with AML/CTF obligations.
- 116 However, the FATF definition is not intended to necessarily be directly adopted in domestic legislation, and the guidance notes countries are encouraged to adopt a functional approach to implementation. The FATF definition is concerned primarily with ‘transfer’, ‘exchange’ or ‘control’ of crypto-assets, because the AML/CTF regime is concerned with the transfer or holding of illicit funds. It is not designed as a definition to differentiate between the different types of services that a CASSPr may perform in relation to a crypto-asset, and to apply different regulatory obligations accordingly.

- 117 The proposed service ‘participation in and provision of financial services related to an issuer’s offer and/or sale of a crypto asset’ would need to be clarified in the context of the regulation of CASSPrs. For example:
- (a) In Australia, where there is a ‘provision of financial services’, an entity may well be carrying on a financial services business. The limb may therefore overlap with the AFS licensing regime.
 - (b) The proposals in the Consultation Paper would only apply to services relating to crypto-assets that are not financial products. Meanwhile, ‘financial product’ is embedded into the concept of financial services—providing financial product advice, dealing in a financial product, and making a market for a financial product.
 - (c) This limb, as it is used in the FATF guidance, is intended to capture a range of services that may be performed in relation to the issuance of a crypto-asset, but are distinct from the issuance itself. This could include ‘businesses accepting purchase orders and funds and purchasing [virtual assets] from an issuer to resell and distribute the funds or assets, as well as book building, underwriting, market making and placement agent activity’. These are all services that would be regulated financial services in Australia, if they were performed in relation to financial products.

Overseas context: EU

- 118 The proposed Markets in Crypto-Assets Regulation (MiCA) Regulation includes a regulatory framework for crypto-asset service providers. The proposed MiCA Regulation’s list of crypto-asset services has some similarities to the proposed CASSPr definition.

Note: See Committee on Economic and Monetary Affairs, [Report on the proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive \(EU\) 2019/1937 \(europa.eu\)](#) (proposed MiCA Regulation), 17 March 2022.

- 119 Limbs in the proposed MiCA Regulation that are also reflected in the CASSPr proposal include:
- (a) the exchange of crypto-assets for fiat currency that is legal tender;
 - (b) the exchange of crypto-assets for other crypto-assets; and
 - (c) the transfer of crypto-assets.

Operation of a trading platform for crypto-assets

- 120 The operation of a trading platform for crypto-assets is its own service in the proposed MiCA Regulation, in addition to the items in paragraph 119. It is defined as managing one or more trading platforms for crypto-assets, within which multiple third-party buying and selling interests for crypto-assets can

interact in a manner that results in a contract, either by exchanging one crypto-asset for another or a crypto-asset for fiat currency that is legal tender.

121 The proposed MiCA Regulation provides a level of certainty for crypto-asset trading platforms, and their users and stakeholders. There should similarly be clarity for operators and users in Australia to address concerns about potential gaps.

Wider coverage

122 The proposed MiCA Regulation’s crypto-asset service definition is more comprehensive in that a wider range of services are listed. Some examples of crypto-asset services in the proposed MiCA Regulation are:

- (a) the execution of orders for crypto-assets on behalf of third parties;
- (b) placing of crypto-assets;
- (c) the reception and transmission of orders for crypto-assets on behalf of third parties;
- (d) providing advice on crypto-assets;
- (e) the exchange of crypto-assets for financial instruments;
- (f) providing portfolio management on crypto-assets; and
- (g) the provision of a portfolio management service.

123 ASIC supports international consistency. If an entity conducts activities resembling crypto-asset services listed under the proposed MiCA Regulation, then as a starting point there should be some consideration of whether these activities should have comparable regulation in Australia. Consistent with the proposed MiCA Regulation, it may be appropriate to have some tailored obligations which align with the risks of each service.

Advice

124 We note that ‘providing advice on crypto-assets’ is a service in itself that brings an entity within the regulatory perimeter of the proposed MiCA Regulation, without having to first satisfy another limb of a crypto-asset service definition.

125 Question 13 of the Consultation Paper asks two questions ‘[s]hould there be a ban on not providing advice which takes into account a person’s personal circumstances in respect of crypto assets available on a licensee’s platform or service?’. Then whether ‘CASSPrs [should] be prohibited from influencing a person in a manner which would constitute the provision of personal advice if it were in respect of a financial product (instead of a crypto asset)’.

- 126 Our interpretation of the second question is that personal advice in respect of crypto-assets (that are not already financial products) would only be regulated when an entity is *already* a CASSPr under the definition extracted at paragraph 113. This may be inconsistent with the approach in the proposed MiCA Regulation.
- 127 In general, poor quality advice poses risks to consumers, whether that advice comes from a CASSPr or from another source.
- 128 Under the AFS regime, advice on financial products is a regulated service that requires a licence. There are also numerous conduct and disclosure obligations that apply to providers of personal financial product advice to retail clients.
- 129 An area of concern for ASIC recently has been the discussion of financial products online by ‘finfluencers’. We set out information on this in [Information Sheet 269](#) *Discussing financial products and services online* (INFO 269), particularly on how finfluencers may be providing financial product advice on social media platforms or similar, or arranging for persons to deal in financial products in some circumstances.
- 130 Currently, there are very limited regulatory levers to promote quality advice in relation to crypto-assets that may not be financial products.

The token mapping exercise should consider how issuers of crypto-assets should be regulated

- 131 Although the Consultation Paper is focused on how to regulate intermediary service providers, we consider that the token mapping exercise should explicitly consider how to regulate issuers to ensure there are no regulatory gaps.
- 132 We note that limb (v) of the proposed CASSPr definition is directed at services provided in relation to the ‘issuance’ of crypto-assets. Issuance in the context of the FATF guidance is intended to refer to activities such as creating or ‘minting’ coins or tokens on a blockchain. It does not connote any transfer or exchange to a third party. The activities regulated under limb (v) are the services that may be associated with issuance, rather than the issuance itself.
- 133 The obligations proposed in the later sections of the Consultation Paper do not propose any obligations on issuers of crypto-assets. Elsewhere in the paper we note that it is suggested issuance of crypto-assets should be unregulated:
- [T]here is a distinction between issuers of crypto assets and the service providers who facilitate consumer access to them. The introduction of

secondary service providers and centralised systems actors introduces risk, and a requirement for trust. This leads to a need for regulation of secondary service providers.

- 134 We consider that it is important that issuers of crypto-assets are regulated. Ordinarily ‘issuers’, ‘manufacturers’ or ‘creators’ of products are subject to regulation, which varies depending upon the nature of the product they are offering.
- 135 Issuers of financial products are generally subject to a range of obligations, including licensing, conduct and disclosure requirements. Issuers must also make target market determinations to ensure that products are appropriately designed and are not mis-sold to consumers. Depending on the type of financial product, they may also be required to comply with other conduct obligations, or be required to have minimum levels of financial resources. Manufacturers of other consumer products are regulated under the Australian Consumer Law and can be held responsible for ensuring that their products meet certain minimum consumer guarantees and comply with other obligations.
- 136 Other jurisdictions moving to regulate crypto-assets are looking to regulate issuers. The proposed MiCA Regulation defines an issuer as someone that ‘offers to the public any crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets’.
- 137 Under the proposed MiCA Regulation, issuers must ensure that certain information is made available to consumers, including in the marketing material and on the issuer’s website, similar to how a Product Disclosure Statement (PDS) or basic product information would be required to be made available for financial products. This ensures that the issuer makes reliable sets of information about product features available to the market. The issuer can then be held accountable if the product does not meet those features. Without these reliable authoritative sets of information, it is unclear what information a consumer may be able to rely on, as there is often a range of different and potentially conflicting information available on websites or blogs.

C Obligations for CASSPrs

Key points

We support the application of the obligations proposed in the Consultation Paper.

However, we consider that any crypto-asset regulatory framework should include a number of additional obligations, to ensure appropriate consumer protection and regulatory consistency with the financial services sector. Many of these obligations would apply automatically if crypto-assets were specified as financial products. We also support certainty for consumers in the event that a CASSPr faces financial distress.

ASIC supports international comity and consistency of regulation. Although there is not a consistent global approach to regulating crypto-assets, developments overseas are consistent with the need for strong regulation. We provide examples of measures from other jurisdictions and commentary from international bodies to highlight the need for obligations that go further than those proposed in the Consultation Paper. We also provide some technical comments on the obligations proposed in the Consultation Paper, particularly the obligations that would apply to a CASSPr relating to scam prevention, and 'true to label' requirements.

The need for additional consumer protections and other obligations

- 138 We generally agree that a regulatory framework applying to CASSPrs should include the types of obligations proposed in the Consultation Paper: see paragraphs 189–226.
- 139 However, there are a number of additional consumer protections and other obligations, which apply to financial products and services, that we consider should form part of a crypto-asset regulatory framework. Many of these obligations would apply automatically if crypto-assets were specified as financial products.
- 140 The absence of additional obligations may leave consumers exposed. In an environment where some products (including some crypto-assets) carry particular protections and obligations, while others do not, entities and consumers would face a more complicated regulatory environment.
- 141 The list of obligations below is not intended to be exhaustive, but rather demonstrate some of the important protections we consider would help to achieve the objectives of a crypto-asset regulatory framework. Further detailed consideration would need to be given to how each of the obligations may apply to certain types of crypto-asset products and services.

142 We also consider that products and services regulated by ASIC should be subject to the consumer protection provisions in the ASIC Act, rather than the Australian Consumer Law. This is consistent with the position for financial products and services.

General conduct obligations

143 ASIC supports additional general conduct obligations for CASSPrs, to reflect the obligations that AFS licensees are subject to (under s912A and 912B of the Corporations Act) but which were not proposed in the Consultation Paper. In this submission we focus on two particular obligations—the requirement to maintain competence to provide the regulated services (s912A(1)(e) of the Corporations Act), and the obligation to have arrangements to compensate consumers for loss or damage.

Organisational competence and staffing requirements

144 ASIC encourages a comprehensive approach to organisational requirements and staffing for CASSPrs, including an organisational competence obligation. For existing AFS licensees, ASIC assesses compliance with this obligation by looking at the knowledge and skills of ‘responsible managers’, and provides guidance in [Regulatory Guide 105 AFS licensing: Organisational competence](#) (RG 105).

Custody and holding assets

145 ASIC sets further organisational and staffing requirements in the context of custody of financial products and the holding of scheme property by a registered managed investment scheme.

Note: See ASIC [Class Order \[CO 13/1410\] Holding assets: Standards for providers of custodial and depository services](#) and ASIC [Class Order \[CO 13/1409\] Holding assets: Standards for responsible entities](#).

146 These requirements are particularly relevant given the focus on custody in the Consultation Paper. If the crypto-asset is not a ‘financial product’ within the meaning of s764A of the Corporations Act nor property of a registered managed investment scheme, custody of those crypto-assets is not a ‘financial service’ (see s766A), including a ‘custodial service’ (see s766E) and is not caught by [CO 13/1409].

Overseas context: EU

147 The proposed MiCA regulatory framework proposes robust organisational requirements for crypto-asset service providers.

Note: See Committee on Economic and Monetary Affairs, [Report on the proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive \(EU\) 2019/1937 \(europa.eu\)](#), Article 61, 17 March 2022.

148 ASIC draws out some sample obligations based on the proposed MiCA Regulation:

- (a) Members of the management body of a crypto-asset service providers shall have the necessary good repute and competence, in terms of qualifications, experience and skills to perform their duties, and demonstrate that they are capable of committing sufficient time to effectively carry out their functions.
- (b) A crypto-asset service provider shall establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels.
- (c) Crypto-asset service providers shall employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them, and taking into account the scale, nature and range of crypto-asset services provided.
- (d) Crypto-asset service providers shall take all reasonable steps to ensure continuity and regularity in the performance of their crypto-asset services. To that end, crypto-asset service providers shall employ appropriate and proportionate resources and procedures, including resilient and secure information and communications technology (ICT) systems.
- (e) They shall establish a business continuity policy, which shall include ICT business continuity as well as disaster recovery plans.
- (f) Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, orders and transactions undertaken by them. Those records shall be sufficient to enable authorities to fulfil their supervisory tasks and to perform enforcement actions, and in particular to ascertain whether the crypto-asset service provider has complied with all obligations, including those with respect to clients or potential clients and to the integrity of the market.
- (g) A crypto-asset service provider shall have in place systems, procedures and arrangements to monitor and detect market abuse.

Compensation for retail clients

149 AFS licensees are required to have in place compensation arrangements for where they provide a financial service to a retail client, and they, or their representatives, in providing that service have breached obligations under Ch 7: see s912B. This is a key mechanism for ensuring that redress for breaches of the law occurs in a timely way.

Note: See ASIC [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126) for guidance on how ASIC administers the requirements in s912B.

150 In addition, where a licensee or their representative has provided personal advice to a retail client, and there is a breach of the law, they must notify the client, conduct an investigation into the breach, and then remediate the client within 30 days of the investigation being completed: s912EB.

ASIC Act consumer protections

151 Protections in the *Australian Securities and Investments Commission Act 2001* (ASIC Act) should apply to crypto-asset service offerings as a minimum. These protections include:

- (a) that services should be rendered with due care and skill (s12ED(1)(a) of the ASIC Act);
- (b) that things, such as financial products, supplied in connection with financial services are reasonably fit for any disclosed purpose (s12ED(1)(b) of the ASIC Act);
- (c) that persons cannot engage in conduct which is misleading or deceptive in relation to services they provide (s12DA of the ASIC Act) or make false or misleading representations (s12DB of the ASIC Act);
- (d) that certain forms of ‘unfair practices’ are made illegal, as they are in relation to financial services—these are set out in Subdiv D of Div 2 of Pt 2 of the ASIC Act (s12DA–12DN of the ASIC Act);
- (e) that unconscionable conduct is prohibited (s12CA–12CC of the ASIC Act); and
- (f) that unfair contract terms that do not protect legitimate business interests are voided (s12BF–12BM of the ASIC Act).

Note: See ASIC [Information Sheet 210](#) *Unfair contract term protections for consumers* (INFO 210).

Product intervention powers and design and distribution obligations

152 The 2014 Financial System Inquiry recommended the introduction of a product intervention power and design and distribution obligations. The product intervention power allows ASIC to temporarily intervene if a product (or class of products) has resulted, will result or is likely to result in significant consumer detriment. The design and distribution obligations require financial product issuers to make a ‘target market determination’ and then for regulated persons, including platform operators, to sell the product in accordance with the determination.

Note: See [Regulatory Guide 272](#) *Product intervention power* (RG 272) and ASIC [Regulatory Guide 274](#) *Product design and distribution obligations* (RG 274).

Protections for advice

- 153 We consider that it is important to regulate advice in relation to crypto-assets as financial product advice: see Section B. In particular, we note that investors may seek advice from professional advisers about crypto-assets. Ensuring that advice, if sought, is of a minimum quality is an integral part of consumer protection. It is also important to ensure that any advice is free from conflicts and in the best interests of the client: see Pt 7.7A.

Clients may rescind agreements with non-licensees

- 154 Under certain circumstances, a client may give a person (who was required to hold an AFS licence but did not do so) a written notice stating that the client wishes to rescind the agreement: see Div 11 of Pt 7.6.

Disclosure of service offerings

- 155 The proposed CASSPr licensing regime does not require a CASSPr to make disclosure to retail clients about their service offerings, similar to what would be required in a Financial Services Guide (FSG). This is a consumer protection mechanism that allows consumers to compare different services and make informed decisions.

Certainty for users in the event of financial distress

- 156 It is important that consumers are protected if a CASSPr, such as a crypto-asset exchange or wallet provider, is in financial distress. Users should have clarity from the outset around their rights and protections in the event that a CASSPr enters financial distress.
- 157 We support the introduction of requirements about holding assets on trust for the consumer and ensuring that consumers' assets are appropriately segregated. The design of these requirements should be informed by the experiences of financial services regulators. We welcome any further measures that can provide greater certainty for users in recovering assets in a prompt manner. Insolvency is a particularly complex area with issues potentially including the commingling of house and client assets, commingling of client assets with the assets of other clients, rehypothecation, settlement finality, client money, and the bankruptcy remoteness of vehicles.

Consumer-focused regulation

- 158 The design of regulation and the approach to supervision should be informed by research of consumer behaviour and an understanding of potential consumer harm. Considerations may include:
- (a) why consumers are motivated to use or invest in crypto-assets;
 - (b) what are the sources of information that investors use to conduct research;
 - (c) what is the impact of advertisements and promotions on consumer decisions;
 - (d) are investors borrowing to invest, or are there any other aspects of leverage;
 - (e) what amounts are being invested;
 - (f) what is the level of diversification in investor portfolios and their previous investment experience;
 - (g) what are the amounts invested relative to income; and
 - (h) how long are investments held.
- 159 In [Report 632](#) *Disclosure: Why it shouldn't be the default* (REP 632), ASIC expressed that:
- Disclosure is not then the silver bullet it was once believed to be. It places a heavy burden on consumers to, for example, overcome complexity and sophisticated sales strategies ...
- This raises both opportunities and challenges for policy makers, regulators and industry to progress public policy discussions beyond disclosure, and understand and address consumer harms on a case-by-case basis
- While it is clear that disclosure still has a role to play in retail financial services markets—for instance, in contributing to market transparency, integrity and efficiency—no one regulatory tool can be a cure-all for all regulatory problems. Which tool, or combinations of tools, will be fit for purpose in any particular case requires:
- › a deep understanding of the underlying problem
 - › regard to behaviourally informed insights ... for instance, by increasing regulatory focus on complexity, choice architecture and how (financial) decisions are framed and made.
- 160 A regulatory regime must be supported by a combination of tools that will be available so that a regulator can respond in a practical way to real-world scenarios that lead to consumer harm. In this submission, we have suggested some tools using Ch 7 as the starting point. Overseas examples provide additional context.
- 161 Overseas jurisdictions are still in the process of developing their regulatory frameworks, and so what will constitute best practice for consumer protection is not fully determined. What is clear from the following

examples is that overseas policymakers are prioritising addressing consumer harm, including the risk that consumers are exposed to crypto-assets beyond their ability to absorb the potential loss, not least because of behavioural factors in play through the way these products are promoted to consumers.

Overseas context: Canada

162 We describe the Canadian framework at paragraph 182. Under this framework, crypto-asset trading platforms can seek to operate under interim arrangements, generally expected to last two years. Some entities are currently covered by decisions that provide for interim arrangements. Recent decisions provide examples of conditions that can promote the consumer interest.

Note: See Ontario Securities Commission, [In the Matter of Bitbuy Technologies](#), 30 November 2021, and [In the Matter of Simply Digital Technologies Inc. \(carrying on business as CoinSmart\)](#), 21 December 2021.

163 For example, one type of condition is that a crypto-asset trading platform will monitor client activity, and contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of crypto-asset trading, in an effort to identify and deter behaviours that may indicate that trading a crypto contract is not appropriate for the client, or that additional education is required.

164 Another form of condition is that a crypto-asset trading platform implement investment limits, and that the quantum vary depending on the client or category of client.

Overseas context: UK

165 The UK Government plans to bring ‘qualifying cryptoassets’ within the scope of financial promotion provisions. The communication of financial promotions is subject to regulatory safeguards that seek to ensure that consumers are appropriately protected. In general, an individual or business cannot communicate a financial promotion unless they are authorised by the FCA or the Prudential Regulation Authority (PRA), or the content of the promotion is approved by a firm that is authorised by the FCA or the PRA.

Note: See HM Treasury, [Cryptoasset promotions: Consultation response](#) (PDF 304 KB), January 2022.

166 Within that financial promotion framework, the FCA has published a consultation paper that sets out a proposed instrument with rules. The FCA consultation paper proposes that qualifying cryptoassets should fall under a category to be called Restricted Mass Market Investments (RMMI).

Note: See FCA, [Strengthening our financial promotion rules for high risk investments, including cryptoassets](#) (PDF 2.11 MB), consultation paper, January 2022.

- 167 The FCA consultation paper is underpinned by consumer research. The findings referred to in the consultation paper include topics such as:
- (a) the proportion of the population that hold or have held cryptocurrencies;
 - (b) attitudes towards crypto-assets;
 - (c) overall understanding of crypto-asset users; and
 - (d) the role of promotions for consumers in their purchase of crypto-assets.
- 168 The FCA consultation paper proposes that the mass marketing of crypto-assets to retail consumers will be permitted, subject to meeting the requirements of financial promotion rules. These rules include risk warnings and a ban on inducements to invest.
- 169 ‘Direct offer financial promotions’ (which, in general terms, specifies how consumers should respond or includes a form to respond) could only be made if certain requirements are met. Firms would have to comply with proposed FCA rules on:
- (a) positive frictions, such as a cooling-off period for a first time investor;
 - (b) client categorisation, such as restricted investor, high net worth investor or certified sophisticated investor; and
 - (c) appropriateness assessments.

Overseas approaches to regulating crypto-asset trading platforms

- 170 In this section, we will provide insight into how crypto-asset trading platforms are being considered overseas from a regulatory perspective. We note that we also provide commentary in respect of the fair, orderly and transparent obligation later at paragraph 194.
- 171 In our experience, there are also mechanisms such as licence conditions and cooperation arrangements that can help facilitate the practical regulation and supervision of entities in a way that makes sense in the circumstances.
- 172 We note the need for robust and relevant data to better understand crypto-asset exchanges and the crypto-ecosystem. The authors of a BIS working paper noted that:
- [D]ata gaps risk undermining the ability of authorities to oversee and regulate cryptocurrencies holistically. While some of these blind spots reflect the global nature of cryptocurrencies, there is scope to enhance the systematic collection and publication of cryptocurrency data in a more rigorous and robust manner.

Note: See BIS, Working Paper No. 1013, [Banking in the shadow of Bitcoin? The institutional adoption of cryptocurrencies](#) (PDF 1.37 MB), by Raphael Auer, Marc Farag, Ulf Lewrick, Lovrenc Orazem and Markus Zoss, May 2022.

IOSCO

- 173 IOSCO issued [Issues, risks and regulatory considerations relating to crypto-asset trading platforms: Final report](#) (PDF 478 KB) (IOSCO report) in February 2020. IOSCO's report sets out the following key considerations for crypto-asset trading platforms:
- (a) access to crypto-asset trading platforms;
 - (b) safeguarding participant assets;
 - (c) conflicts of interest;
 - (d) operations of crypto-asset trading platforms;
 - (e) market integrity;
 - (f) price discovery; and
 - (g) technology.
- 174 A regulatory framework for crypto-asset trading platforms should cover the topics identified in the IOSCO report. A gap between the Australian regulatory framework and IOSCO considerations increases risk that Australia falls out of alignment with the protections available in other jurisdictions.

Access

- 175 The IOSCO report considers access both in terms of the criteria for accessing a crypto-asset trading platform and also the on-boarding process. How access is provided to crypto-asset trading platforms can be a particularly pertinent issue, sometimes even more so than with other financial markets, because of increased non-intermediated access for retail investors to crypto-asset trading platforms.
- 176 A trading platform should articulate who can access the system or exchange and apply the access criteria fairly and on a non-discriminatory basis.
- 177 Where retail investors are permitted to have direct access to a crypto-asset trading platform, investor suitability assessments before account opening are a relevant consideration. The IOSCO report expresses that such on-boarding assessments are an important element of investor protection to ensure that investors are participating in asset classes that match their individual financial situations/risk tolerances and to mitigate risks of significant loss.
- 178 There may also be a role for a risk warning that sets out the risks of trading the types of products that are available on the crypto-asset trading platform. The design of any risk warnings should be informed by consumer behaviour research.

Conflicts of interest

179 The IOSCO report identified the negative impact of unmitigated conflicts on investor protection and confidence, as well as fair, efficient and transparent markets.

180 While conflicts of interest are not unique to crypto-asset trading platforms, it can be a particularly pernicious issue in this context for reasons such as proprietary trading and/or market making on the platform by crypto-asset trading platform operators, employees or affiliates.

Market integrity

181 The IOSCO report provides a summary of key findings from a survey sent to regulators:

The main risk identified by respondents in relation to market integrity was the potential for market manipulation and investor losses. Concerns were raised by some jurisdictions relating to a lack of disclosure regarding whether and how [crypto-asset trading platforms] govern or enforce any trading standards, or to ensure that trading is fair and orderly. A related concern expressed in some responses was whether [crypto-asset trading platforms] were adequately equipped to monitor trading, in terms of surveillance tools or other resources such as necessary expertise.

Canada

182 Canadian regulators have provided clarity on how they can apply existing securities legislation to crypto-asset trading platforms. A platform may be subject to securities legislation if crypto-assets that are traded on a platform are securities or derivatives. Securities legislation may also apply to some platforms that provide their users with a contractual right or claim to an underlying crypto-asset, rather than immediately delivering the crypto-asset to its users. Therefore, crypto-asset trading platform users in Canada benefit from the regulators' existing financial regulation experience and framework.

Note: See Canadian Securities Administrators (CSA), CSA Staff Notice 21-327, [Guidance on the application of securities legislation to entities facilitating the trading of crypto assets](#) (PDF 183 KB), 16 January 2020.

183 Canadian regulators have published information that explains how existing regulatory requirements can manage crypto-asset trading platform risks. The coverage of regulatory issues is broader than the proposal in the Consultation Paper. It includes:

- (a) safeguarding investor assets when a dealer platform or marketplace platform has custody;
- (b) access to marketplace platforms;
- (c) system resiliency, integrity and security controls;
- (d) transparency about operations and the crypto-assets traded on the platform;

- (e) market integrity and price discovery;
- (f) direct access by retail investors; and
- (g) conflicts of interest.

Note: See Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada, Staff Notice 21-329, [Guidance for crypto-asset trading platforms: Compliance with regulatory requirements](#) (PDF 675 KB), 29 March 2021.

184 There can be an interim period, where a platform can operate in an environment with time-limited relief arrangements. During that interim period, the platform is expected to transition to a long-term regulatory framework.

EU

185 In addition to a general set of obligations for crypto-asset service providers, the proposed MiCA Regulation provides a more specific set of obligations for service providers that operate a crypto-asset trading platform.

Note: See Committee on Economic and Monetary Affairs, [Report on the proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive \(EU\) 2019/1937 \(europa.eu\)](#), 17 March 2022.

186 The proposed MiCA Regulation provides clarity in prescribing content that should be covered in the operating rules. We draw out examples of topics that should be covered in operating rules:

- (a) clarity about how the market operator will act as a gatekeeper in terms of the products that are admitted to trading;
- (b) requirements to ensure fair and orderly trading;
- (c) conditions for crypto-assets to remain accessible for trading;
- (d) procedures to ensure efficient settlement of both crypto-asset transactions and fiat currency transactions; and
- (e) transparent and non-discriminatory rules, based on objective criteria, governing access to its facility.

187 The subset of obligations that the MiCA Regulation is proposing for crypto-asset trading platforms also provides some direction on what transparency could look like. This includes making public:

- (a) any bid and ask prices, and the depth of trading interests at those prices, which are advertised for crypto-assets through the systems of the trading platform for crypto-assets; and
- (b) the price, volume and time of the transactions executed for crypto-assets traded on their trading platforms.

Note: See Committee on Economic and Monetary Affairs, [Report on the proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive \(EU\) 2019/1937 \(europa.eu\)](#), Article 68, 17 March 2022.

188 The proposed MiCA Regulation has also identified that it is necessary to ensure users’ confidence in crypto-asset markets and market integrity. MiCA’s proposed approach is that bespoke rules on market abuse committed in relation to crypto-assets should be applied, where crypto-assets are admitted to trading on a crypto-asset trading platform.

Note: See Committee on Economic and Monetary Affairs, [Report on the proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive \(EU\) 2019/1937 \(europa.eu\)](#), recital 64, 17 March 2022.

Commentary on obligations included in the Consultation Paper

Do all things necessary to ensure that the services covered by the licence are provided efficiently, honestly and fairly

189 We consider it appropriate to apply this obligation to CASSPrs.

190 We note that this is a compendious obligation, which in the context of an AFS licence or a credit licence requires a licensee to do all things necessary to ensure all of its services are provided in a way that meets all the elements of ‘efficiently, honestly and fairly’.

191 The provision is a civil penalty provision, which is enforceable by ASIC: see s912A(5A) of the Corporations Act. However, as it is an ‘uncategorised civil penalty provision’, compensation orders for damage resulting from a contravention cannot be made: see s1317HA(1) and Table 1 in s1317E of the Corporations Act.

192 It is a stand-alone obligation that operates in addition to other general obligations that are applied. When another obligation is breached, this obligation may also be breached. It may also be breached when there is no breach of another provision or obligation.

Do all things necessary to ensure that any market for crypto-assets is operated in a fair, transparent and orderly manner

193 We consider it appropriate to apply this obligation to CASSPrs, if they operate a market for crypto-assets.

194 Market licensees are subject to an obligation to ensure they do all things necessary to ensure that the market venue is fair, orderly and transparent to the extent that it is reasonably practicable to do so. Guidance on this obligation is in [Regulatory Guide 172](#) *Financial markets: Domestic and overseas operators* (RG 172) at RG 172.24–RG 172.26 and RG 172.71–RG 172.78. The obligation applies both as:

- (a) a broad description of all the market licensee obligations; and

- (b) a separate obligation that the market licensee must comply with.
- 195 The fair, orderly and transparent obligation has at least two concepts at its core:
- (a) All market participants are placed in an equal position such that there is a level playing field.
- (b) Markets operate reliably, displaying price continuity and depth, and avoiding unreasonable or unnecessary price variations between sales. Regulation to ensure orderly markets does not necessarily involve the eradication of volatile or unpredictable markets.
- 196 The obligation provides confidence to participants and also helps protect consumers from harm by requiring market licensees to have mechanisms for preventing certain forms of manipulative conduct, including around trading transparency.
- 197 However, the obligation should be viewed in context. There are many other obligations that support the obligation that markets are operated in a fair, orderly and transparent manner. Some of the general obligations are that market licensees must:
- (a) comply with the conditions on the licence (conditions on each licence can be tailored);
- (b) have adequate arrangements for handling conflicts, and monitoring and enforcing compliance with operating rules;
- (c) have sufficient resources (including financial, technological and human resources);
- (d) have approved compensation arrangements; and
- (e) ensure no disqualified individual is involved in the licensee.
- 198 A market licensee will also have operating rules, which must deal with certain matters, including:
- (a) arrangements for access to the market;
- (b) how orders are executed;
- (c) the products available on the market;
- (d) obligations on participants and listed entities relating to conflicts;
- (e) participant conduct obligations;
- (f) how disorderly trading is dealt with;
- (g) action for participant breaches of operating rules; and
- (h) if the market venue has a listing function, obligations relating to listing, admission and delisting.

- 199 In addition, there are general prohibitions that apply to conduct that occurs on licensed markets, including the prohibitions on:
- (a) market manipulation (s1041A);
 - (b) creating a false or misleading appearance of trading (s1041B);
 - (c) artificially maintaining a market price (s1041C);
 - (d) disseminating information about illegal transactions (s1041D);
 - (e) making false or misleading statements about products traded on markets, which are designed to affect the price of the product (s1041E);
and
 - (f) insider trading (s1043A).

- 200 We consider that it would be necessary to implement more detailed obligations of the kind set out above, as a minimum, to ensure that there:
- (a) is an adequate level of consumer protection; and
 - (b) are appropriate disincentives to potentially harmful conduct occurring in crypto-asset markets.

Have adequate dispute resolution arrangements in place, including internal and external dispute resolution arrangements

- 201 We consider it appropriate to apply this obligation to CASSPrs.
- 202 Internal and external dispute resolution is an important mechanism for ensuring consumers have access to remedies. In Australia, financial firms must have a dispute resolution system that consists of:
- (a) internal dispute resolution (IDR) procedures that meet the standards or requirements made or approved by ASIC; and
 - (b) membership of the Australian Financial Complaints Authority (AFCA).
- 203 [Regulatory Guide 271](#) *Internal dispute resolution* (RG 271) sets out how financial firms that must comply with IDR requirements can meet their obligations. The requirements relate to matters such as how firms must record and respond to complaints, and the timeframes for doing so.
- 204 We note that an AFS licensee's IDR processes must cover 'complaints' against the licensee. Firms should consider a broad range of remedies in response to complaints, which are set out in RG 271 (see RG 271.161), but include compensation for wrongs. We note that compensation may be payable for things such as 'breach of contract', or for losses that flow from breaches of certain regulatory obligations. For example, a significant number of complaints that are heard by AFCA include a possible contravention of provisions such as 'responsible lending obligations', and whether credit was originated correctly.

205 While we support consumers having access to dispute resolution, we note that, of the obligations proposed in the Consultation Paper, comparatively few of those are owed to consumers and are of the kinds typically considered by AFCA. However, as we set out above, we support additional obligations applying to CASSPrs.

Ensure directors and key persons responsible for operations are fit and proper persons and are clearly identified

206 We support the intent of applying this obligation to CASSPrs, but note that we consider the application should mirror s913BA of the Corporations Act and apply to ‘officers’ (as defined in s9 of the Corporations Act). We also consider that whether a person is a ‘fit and proper’ person should be determined with regard to a similar set of matters that are considered in s913BB of the Corporations Act. Where an officer is not a fit and proper person, ASIC is able to take actions to ban them.

Maintain minimum financial requirements, including capital requirements

207 We support CASSPrs being subject to financial requirements, including capital requirements. Financial requirements should vary in their application depending on the nature, scale and complexity of the relevant business.

208 ASIC’s view is that the financial requirements framework for AFS licensees, as described in ASIC [Regulatory Guide 166](#) *Licensing: Financial requirements* (RG 166), provides a good precedent. This would help to ensure that financial requirements act as a framework, rather than a single headline number. RG 166 explains the tailored financial requirements for particular types of activities such as custodial or depository services.

Comply with client money and property obligations

209 We support CASSPrs complying with client money and property obligations. Obligations of this nature, such as those in the Corporations Act, are an important protection, which restricts how certain client property and money can be used by a service provider.

210 The specific obligations which should apply will require further consideration. A key focus of this further work should be whether any tailoring of the Corporations Act obligations is needed to ensure consumers receive comparable levels of protection. The circumstances within which crypto-assets held by a CASSPr can, or should, benefit from the same protections as ‘client money’ should be considered in detail.

Comply with all relevant Australian laws

- 211 It is a requirement for AFS licensees to comply with the financial services law. The ‘financial services law’ is defined to mean:
- (a) a provision of ... [Ch 7] or of Chapter 5C, 5D, 6, 6A, 6B, 6C, 6D or 8A; or
 - (b) a provision of Chapter 9 as it applies in relation to a provision referred to in paragraph (a); or
 - (c) a provision of the Passport Rules for this jurisdiction; or
 - (d) a provision of Division 2 of Part 2 of the ASIC Act; or
 - (e) any other Commonwealth, State or Territory legislation that covers conduct relating to the provision of financial services (whether or not it also covers other conduct), but only in so far as it covers conduct relating to the provision of financial services; or
 - (f) in relation to a financial services licensee that is a licensed trustee company (in addition to paragraphs (a) to (d))--any rule of common law or equity that covers conduct relating to the provision of financial services that are traditional trustee company services (whether or not it also covers other conduct), but only in so far as it covers conduct relating to the provision of such services.
- 212 Paragraph (e) of that definition is expressed broadly, to cover any Commonwealth, State or Territory legislation which applies in relation to the provision of financial services. This could cover AML/CTF obligations, to the extent those obligations relate to the provision of financial services.
- 213 We support an obligation of this nature being imposed upon CASSPrs. We also support the proposed additional obligation specific to AML/CTF obligations: see paragraph 225.

Take reasonable steps to ensure that the crypto-assets it provides access to are ‘true to label’

- 214 In general, we support the idea that entities are responsible for representations that they may make or endorse, and that where those representations are not ‘true to label’ that a licensee is accountable for that misrepresentation. Section 1041H of the Corporations Act sets out that a person must not engage in conduct which is misleading or deceptive in relation to a financial product. Conduct includes, but is not limited to, ‘dealing’, ‘issuing’ or ‘publishing a notice’ in relation to a financial product. There are other, more targeted prohibitions elsewhere in the Corporations Act: see s728.
- 215 It is unclear how the obligation included in the Consultation Paper is intended to work, given that the entity that provides access to the crypto-asset is not necessarily the issuer, and therefore may not necessarily be responsible for any labels or descriptions of the crypto-asset. However, where the CASSPr does engage in conduct which may mislead someone about the asset, this would be covered.

- 216 If the proposed obligation is intended to act as a due diligence obligation for CASSPrs before they permit trading in crypto-assets, this should be clarified. While we agree that a CASSPr has access to information and may often be in a position to assess whether assets traded on their platform are ‘true to label’, these assessments can be difficult and what constitutes ‘reasonable steps’ can vary with context and the complexity of the asset. The obligation also tends to assume that there is a ‘label’ or fixed set of information that a CASSPr could assess to make this determination. There are often different sources of information provided about a crypto-asset, and the crypto-asset may be modified over time, changing the asset’s features and affecting any CASSPr’s assessment.
- 217 Such an obligation would be easier for a CASSPr to comply with if it existed within a system of mandatory disclosures by issuers. A system which requires mandatory disclosures is being considered in MiCA, where issuers are required to make available certain information, such as white papers.
- 218 The obligation proposed in the Consultation Paper should also be considered in the context of market integrity requirements and any rules about what products may be admitted for trading.

Respond in a timely manner to ensure scams are not sold through the platform

- 219 We support obligations on CASSPrs to minimise the risk of scams to their consumers. Between 1 January and 1 May this year, the Australian Competition and Consumer Commission (ACCC) reported that Australians lost around \$113 million to crypto-asset investment scams. This represents the majority of the \$158 million total amount lost to investment scams over that period. While some crypto-assets may themselves be fraudulent or involve a scam, many of the reported cases are more conventional scams that involve or are carried out using crypto-assets.
- 220 ASIC has issued a number of warnings over the last year about scams involving crypto-assets. As CASSPrs facilitate access to crypto-assets by consumers, they are often the best placed to take action to prevent scams. We therefore support an obligation on CASSPrs to take all reasonable steps to ensure that they do not inadvertently facilitate scams, or that their consumers are not exposed to scams. Such an obligation will help promote trust and confidence in the sector, and is consistent with a responsibility on industry to ensure consumers are not exposed to conduct involving scams.
- 221 While the detail of this obligation would need to be further developed, we consider that taking all reasonable steps would require a CASSPr to:
- (a) undertake risk assessments;

- (b) put in place procedures and processes to manage the risk of their consumers being exposed to scams;
- (c) have a process for receiving information about possible scam activity from consumers;
- (d) respond to reports of scams by consumers in a timely way, including by notifying relevant law enforcement agencies; and
- (e) provide general warnings or information to consumers about recent scam activity that they may need to guard against.

Not hawk specific crypto-assets

- 222 The hawking of financial products to retail clients is prohibited under s992A. The prohibition applies to ‘any person’, rather than just AFS licensees.
- 223 We support consistent regulation and consider that the hawking prohibition should apply to crypto-assets that are financial products.

Be regularly audited by independent auditors

- 224 ASIC supports regular independent audits of a CASSPr.

Comply with AML/CTF obligations

- 225 We support the proposed inclusion of an obligation for CASSPrs to comply with the AML/CTF obligations. This approach has advantages over reliance on complying with the financial services laws, as there would not need to be a connection to financial services for this obligation to apply. We support the proposal in the Consultation Paper that a breach of AML/CTF obligations be grounds for a licence cancellation.

Maintain adequate custody arrangements

- 226 We discuss custody in more detail in Section D.

D Custody arrangements

Key points

ASIC recommends consideration of the different types of models for holding crypto-assets and then setting obligations that reflect each model. We consider that there may be advantages to imposing custody requirements through the Ch 7 regime.

ASIC supports the proposal in the Consultation Paper that consumers' assets are appropriately segregated. We emphasise the importance of clarity about the meaning of appropriate segregation.

Regulatory perimeter of CASSPr custody regime

Models for holding assets in the crypto-asset ecosystem

- 227 ASIC recommends clarifying which entities will need to be licensed and who will have responsibility for meeting custody standards. It is unclear which entity (the crypto-asset custodian or the CASSPr with direct relationship with the consumer) would be subject to the regulatory responsibility for custody under the proposals in the Consultation Paper.
- 228 The proposed CASSPr definition includes entities that provide 'safekeeping and/or administration of virtual assets or instruments enabling control over crypto-assets', which suggests that a crypto-asset custodian will be a CASSPr with responsibility for holding the crypto-assets, and that if the custody is outsourced the CASSPr with the direct relationship with the consumer may not be offering a crypto-asset custody service. However, subsequently the section on custody states '[t]he CASSPr that has the direct relationship with the consumer would be liable for the safekeeping of all crypto asset private keys in its care' which suggests all CASSPrs offering some form of custodial crypto-asset service will have the obligations regarding custody.
- 229 ASIC recommends further consideration of the different types of models for holding crypto-assets, and then adopting the regulatory framework(s) that fits best with each model. By way of example, ASIC has minimum standards under [\[CO 13/1410\]](#) for a provider of custodial or depository services in relation to financial products which are offered as a distinct service to customers. Separately, a framework for responsible entities of managed investment schemes applies under [\[CO 13/1409\]](#) (as the asset held by or on behalf of the responsible entity, are 'scheme property' within the meaning of the Corporations Act, regardless of whether the scheme property comprises

financial products). The custody standards imposed through both instruments are broadly similar, but there are the differences in their application due to the nature of the product and services.

Note: [CO 13/1409] is a mechanism to impose custody standards on the responsible entity because the holding of scheme assets is not otherwise a ‘custodial and depository service’ as a result of s766E(3)(b)—the externally appointed custodian of scheme assets is not required to have an AFS licence as this activity.

230 The Consultation Paper’s proposals appears to be based on the approach for responsible entities of managed investment schemes, as it refers to the good practice principles in INFO 225 and described the regime for responsible entities in Appendix 2. ASIC notes that holding of scheme assets is an inherent embedded feature of a managed investment scheme product, whether or not the responsible entity appoints an external custodian. The managed investment scheme structure therefore may not necessarily be analogous to all the different CASSPr models and crypto-asset custody solutions.

231 The framework for custodial and depository services may be more appropriate framing of the service being provided and obligations on CASSPrs. This framework would align with the definition of a CASSPr, as that contemplates that a CASSPr does not have to provide safekeeping or administration of the crypto-assets.

Multi-signatory requirements

232 The proposed obligation in the Consultation Paper to adopt signing approaches that minimise ‘single point of failure’ risk is an example of how the right set of regulatory requirements depends on the model of custody. Multi-signatory requirements may be appropriate for institutional investors or shared accounts, but will be more difficult to apply in the context of a retail client with an individual account or wallet.

Financial product regulation

233 The creation of a separate custody regime for crypto-assets would mean participants in the crypto-asset ecosystem would face a complex assessment of whether the service involves a financial product and uncertainty about which custodial regime(s) applies.

234 ASIC considers that there may be advantages to imposing custody requirements through the Ch 7 regime. If a separate CASSPr regime was created, then there would need to be clarity about how this regime interacted with the regulation of custodial or depository services under the AFS licensing regime. By way of example, a custodian may currently provide custodial services to an institutional client for instruments that are financial products. The custodian holds an AFS licence. The custodian may then look

to expand its custody offering to include crypto-assets, some of which may be financial products and some that may not.

- 235 ASIC also recommends clarification of the reference to ‘non-crypto client assets’. The Consultation Paper asserts that obligations would aim to protect both crypto and non-crypto client assets from the insolvency of a service provider. To the extent that any financial products fall within the scope of the non-crypto client assets category, there is likely to be overlap with obligations under the AFS licensing regime.

Regulatory obligations attached to custody in the crypto-asset context

Principles-based approach

- 236 ASIC supports the inclusion of general principles about custody in legislation. For example, Treasury’s consultation paper includes principles such as holding assets on trust for the consumer and maintaining minimum financial requirements. We support these principles.
- 237 As noted above, the final design of regulatory requirements, including around custody, will require further detailed consideration. This may include consideration of the relative roles of legislation, delegated legislation and regulatory guidance. ASIC generally supports a consistent approach to that for similar services under Ch 7, such as the regulation of custodial and depository services. ASIC considers that some of the principles outlined in the Consultation Paper may be suited to delegated legislation or guidance (e.g. multi-signatory, single point of failure).

Segregation of assets

- 238 ASIC supports the obligation in the Consultation Paper that consumers’ assets are appropriately segregated. We see value in additional clarification of the proposed obligation that consumers’ assets are appropriately segregated. The Consultation Paper does not express whether crypto-assets are expected to be segregated on the blockchain. It is also not clear whether segregation means ring-fencing between the assets of clients (as a whole) and the CASSPr, or more granular segregation at an individual client level.
- 239 Given the risk profile of crypto products, ASIC’s view is that where CASSPrs deal in both crypto-assets and non-crypto-assets, then crypto-assets and funds related to crypto activities should be segregated from other client money to reduce the risk to clients of CASSPrs who deal in non-crypto-assets.

Key terms

Term	Meaning in this document
ACCC	Australian Competition and Consumer Commission
AFCA	Australian Financial Complaints Authority
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
ALRC	Australian Law Reform Commission
AML/CTF regime	Anti-money laundering and counter-terrorism financing regime Note: See the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> .
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Australian Consumer Law	The national law for fair trading and consumer protection, set out in Sch 2 to the <i>Competition and Consumer Act 2010</i>
BIS	Bank for International Settlements
CASSPr	Crypto-asset secondary service provider
Consultation Paper	Treasury, Crypto asset secondary service providers: Licensing and custody requirements , 21 March 2022
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
crypto-asset	A digital representation of value or rights (including rights to property), the ownership of which is evidenced cryptographically and that is held and transferred electronically by: <ul style="list-style-type: none"> • a type of distributed ledger technology; or • another distributed cryptographically verifiable data structure

Term	Meaning in this document
DeFi	Decentralised finance
FATF	Financial Action Task Force
FATF guidance	FATF, Updated guidance for a risk-based approach for virtual assets and virtual asset service providers , October 2021
FCA	Financial Conduct Authority (UK)
financial product	<p>Generally, a facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (s763B); • manages financial risk (s763C); • makes non-cash payments (s763D) <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition. In addition to the general categories above, this specifies certain things as being included or excluded from the definition.</p>
FSG	<p>A Financial Services Guide—a document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act</p> <p>Note: This is a definition contained in s761A.</p>
IOSCO	International Organization of Securities Commissions
IOSCO report	IOSCO, Issues, risks and regulatory considerations relating to crypto-asset trading platforms: Final report (PDF 478 KB), February 2020
market licence	An Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
MiCA Regulation	The proposed Markets in Crypto-Assets Regulation (EU)
PDS	<p>A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
PRA	Prudential Regulation Authority (UK)
product intervention power	Means the power contained in Pt 7.9A of the Corporations Act and Pt 6-7A of the <i>National Consumer Credit Protection Act 2009</i>
target market determination	Has the meaning given in s994B of the Corporations Act
VASP	Virtual asset service provider

Related information

Regulatory guides

[RG 105](#) *AFS licensing: Organisational competence*

[RG 126](#) *Compensation and insurance arrangements for AFS licensees*

[RG 166](#) *Licensing: Financial requirements*

[RG 172](#) *Financial markets: Domestic and overseas operators*

[RG 271](#) *Internal dispute resolution*

[RR 272](#) *Product intervention power*

[RG 274](#) *Product design and distribution obligations*

Information sheets

[INFO 210](#) *Unfair contract term protections for consumers*

[INFO 225](#) *Crypto-assets*

[INFO 230](#) *Exchange traded products: Admission guidelines*

[INFO 269](#) *Discussing financial products and services online*

Consultation papers

[CP 343](#) *Crypto-assets as underlying assets for ETPs and other investment products*

Reports

[REP 632](#) *Disclosure: Why it shouldn't be the default*

[REP 705](#) *Response to submissions on CP 343 Crypto-assets as underlying assets for ETPs and other investment products*

Legislative instruments

[\[CO 13/1410\]](#) *Holding assets: Standards for providers of custodial and depository services*

[\[CO 13/1409\]](#) *Holding assets: Standards for responsible entities*

Legislation

ASIC Act, s12BF–12BM, 12CA–12CC, 12DA–12DN, 12ED

Australian Consumer Law

Corporations Act, Ch 7, Pt 7.7A, s9, 728, 760A, 764A, 765A, 766A, 766B, 766E, 791A, 912A, 912B, 912EB, 913BA, 913BB, 992A, 1041A, 1041B, 1041C, 1041D, 1041E, 1041H, 1043A, 1317E, 1317HA