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Submission to the Treasury on the Licensing and Custody Requirements for Crypto Asset Secondary Service Providers (CASSPrs)

Caleb and Brown Pty Ltd ("Caleb & Brown", "we") welcome the opportunity to respond to the Department of Treasury's consultation on 'Crypto asset secondary service providers: Licensing and custody requirements'. This submission specifically seeks to address the proposed new licensing regime and token mapping exercise, as well as the potential benefits of regulating CASSPrs under the existing financial services regime.

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I. About Caleb & Brown

Caleb & Brown is a cryptocurrency brokerage firm founded in 2016 with the mission of championing consumer protection and delivering one-on-one guidance to investors at all levels of experience. Caleb & Brown's services are structured so that each individual client is assigned their own personal broker with whom they can place orders to buy, sell, or trade cryptocurrencies and from whom they receive technical customer support. Unlike most other digital currency exchange providers, access to services is not only via an app or website, but also through direct communication with a broker. Transactions are then professionally

executed by traders, at which time a transparent invoice detailing the associated costs and fees is provided to the client.

Both before and after trading with Caleb & Brown, our brokers support the client through all technical processes relating to cybersecurity and wallet management to ensure technical competency risks are mitigated. By providing ongoing and direct access to a broker for each client, Caleb & Brown ensures that customer support and consumer protection is provided through education at the outset of every new customer experience. This engagement mitigates exposure to risks before customers make mistakes attributable to the complexity of the asset class. On the contrary, FAQ pages and support tickets from online-only platforms are limited to attempting to (often unsuccessfully) help customers recover from losses or errors after they occur. It is for this reason that we believe our response to Q13 is the most relevant amongst all Australian DCE's.[1]

In order to achieve our mission of advancing consumer protection, Caleb & Brown employs highly qualified financial services professionals as brokers, with previous experience in firms such as PwC, EY, KPMG, and Macquarie, amongst others. By setting this high bar for employment, every client of Caleb & Brown is guaranteed direct and ongoing access to a highly skilled broker with significant expertise in crypto-assets and cryptocurrency markets. While brokers are currently unable to provide general or scaled financial advice, interested Australian consumers can presently engage with Caleb & Brown to understand more about the technical aspects of how to use and trade cryptocurrencies prior to placing any orders to trade.

As our business continues to grow, we remain committed to employing additional staff in high-skilled jobs here in Australia. Caleb & Brown currently employs 55 staff here in Australia and currently has advertised openings for another 10 positions. Additionally, Caleb & Brown anticipates hiring a further 50 staff over the next twelve months.

Caleb & Brown is a member of Blockchain Australia and Caleb & Brown CEO Jackson Zeng is the DCE Board of Director of Blockchain Australia. In response to the issues raised in the Senate Select Committee's third issues paper, Caleb & Brown previously provided a submission in August 2021 and we were actively involved in Blockchain Australia's submission on the same matter. Caleb & Brown continues to actively participate in industry efforts to improve the digital asset scene.

Question 11. Are the proposed obligations appropriate? Are there any others that ought to apply?

II. Overlapping Licensing and Regulatory Schemes

Caleb & Brown endorses the proposed obligations as outlined in the Treasury's Consultation Paper, entitled Crypto asset secondary service providers: Licensing and custody requirements. While Caleb & Brown appreciates the significant legislative and policy developments made thus far, including the bipartisan Senate Select Committee's work leading up to the Treasury's Consultation Paper, it is Caleb & Brown's belief that the optimal method by which to effectuate the proposed obligations would be through regulation under the existing financial services regime. As such, in response to Question 11, Caleb & Brown endorses the introduction of obligations through the existing AFSL framework, for the reasons discussed below.

a. Overlapping regimes

As currently designed, the proposed regime would capture within its scope CASSPrs that provide retail customers with access to crypto assets that are not financial products by imposing somewhat similar obligations as currently exist for AFS licensees, with additional and more specific crypto-specific obligations. On the other hand, CASSPrs that deal with crypto assets that are financial products would continue to be regulated under the existing AFSL regime. Presently, it remains unclear how the two separate licensing regimes would apply to existing AFS licensees. Similarly, an equally pressing issue is that the Consultation Paper does not address how the two separate licensing regimes would apply to CASSPrs that provide services that deal in both crypto assets that are financial products and crypto assets that are not financial products.

b. Token mapping and financial product uncertainty

While the Consultation Paper proposes token mapping which arguably may help to distinguish between crypto assets that are financial products and those that are not, depending on how precise and granular token mapping is, whether a particular token is or

[1] See Pg 4.

is not a financial product may be regularly in flux, up to the discretion of either the CASSPr or a body such as ASIC. This is not unlike the current dilemma facing crypto entities when determining whether a crypto asset is or is not a financial product. Ultimately, this unaddressed uncertainty means that CASSPrs seeking licensure under the proposed regime still would be unable to rely on determinations as to whether a particular crypto asset is or is not a financial product. This unaddressed uncertainty may mean that a CASSPr is relatively unaware of whether only licensing as a CASSPr is required or, on the other hand, whether much more burdensome AFS licensing is required, in virtue of the CASSPr's interactions with crypto assets deemed to be financial products.

c. Classification difficulties

The current legal status of a cryptocurrency is dependent upon the ICO issuance structure, the function or purpose of the tokens or coins, and/or the rights attached to the tokens or coins.[2] The resulting effect is that responsible crypto entities must engage in regular, costly and cumbersome legal determinations of whether particular crypto assets constitute financial products or, alternatively fall under the purview of background Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

The reality, however, as expressed frequently throughout the Senate Select Committee's call for submissions,[3] is that this is not a straightforward process. Presently, CASSPrs are unable to find a reliable set of classifications of crypto assets or rules for classification from either the Government or related bodies such as ASIC. In consequence, entities are charged with the difficult and costly task of applying a characterisation exercise without any regulatory certainty, with the very real risk of significant penalties attaching to the entity, including financial fines and exclusion from ASIC's licensing schemes in the event that a characterisation yielded an 'incorrect' assessment, according to ASIC. Not only is the applicability of the current patchwork regime left entirely to the discretion of a crypto entity, but the unfixed nature of legal classifications of crypto assets makes determining the purpose and rights attached to a particular crypto asset a problematic task, posing risks to CASSPrs and Australian crypto consumers alike.

d. Insights from other jurisdictions

The issues raised in the previous section are not unlike the challenges that beset the Singaporean regime, which places the burden of classifying a crypto asset as either a Digital Payment Token (DPT) or as a capital markets product on crypto asset businesses. The issue with this approach is that crypto asset businesses have to assess for themselves whether a particular crypto asset is best legally classified as within the scope of a DPT or within the scope of a capital markets product. Again, the lack of clarity surrounding the characterisation of crypto assets leads to unnecessary expenditure of resources by entities attempting to properly classify them in an effort to abide with legislation that ultimately may not entirely be fit-for-purpose. For example, as reported in submissions to the Senate Select Committee, there is ambiguity regarding the legal position of stablecoins, in that existing definitions of DPTs and e-money may not appropriately capture stablecoins.[4] Adding to this uncertainty, the Singaporean experience has been plagued with significant logistical problems in implementing the new regime, with processing times for applications vastly underestimated.[5] At the time of writing, there were at least 170 applications which contributed to the increasingly long processing times for the licence applications, leading to crypto currency businesses looking elsewhere, including other jurisdictions.[6] If anything, the Singaporean experience is indicative of the sorts of issues that will continue to pervade regulators and entities alike should Australia opt to adopt a similar approach.

e. Avoiding overlapping and imprecise regimes

An expanded AFSL framework on the other hand, as discussed further below, largely solves these concerns. The AFSL framework could reasonably and non-disruptively be expanded to include within its scope all crypto assets—this could, for example,

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[2] Australian Securities & Investments Commission, Information Sheet 225: Crypto-Assets (Information Sheet, October 2021) <https://asic.gov.au/regulatory-resources/digital-transformation/crypto-assets/>.

[3] CPA Australia, Submission No 12 to the Senate Select Committee on Australia as a Technology and Financial Centre, Parliament of Australia, Third Issues Paper (30 June 2021) 3-4; FinTech Australia, Submission No 62 to the Senate Select Committee on Australia as a Technology and Financial Centre, Parliament of Australia, Third Issues Paper (30 June 2021) 9-10.

[4] Monetary Authority of Singapore, Consultation on the Payment Services Act 2019: Scope of E-money and Digital Payment Tokens (Consultation Paper, 23 December 2019) 5-8, 10-17; Blockchain Australia, Submission No 71 (71.1 supplementary submission to 71) to the Senate Select Committee on Australia as a Technology and Financial Centre, Parliament of Australia, Final Report (23 July 2021) 14.

[5] Ibid.

[6] Chanyaporn Chanjaroen, 'Binance drops Singapore cryptocurrency bourse bid' (13 Dec 2021) The Australian Financial Review.

relatively easily be achieved by minor amendments to the Corporations Act 2001 (Cth) such that 'crypto assets' are to be defined as within the scope of the term 'financial products'. Such an approach would ensure total clarity and reliability for crypto entities and consumers alike, entirely dispelling any confusion surrounding the potential duality of characterisation that could apply to crypto assets under the proposed regime.

Further, should the Government choose to exclude certain crypto assets from the definition of a 'financial product' in the Corporations Act or through ASIC Regulatory Guides or Class Orders, non-CASSPrs would similarly be afforded a greater degree of clarity and reasonable reliance, permitting these non-CASSPrs to engage with non-financial crypto assets in a legal and compliant manner, outside of the financial services regulatory regime. Indeed, an intermediate regulatory regime similar to that proposed in the Consultation Paper may be better suited to non-financial crypto assets applying to non-CASSPrs only, while use as a financial product remains within the scope of the AFSL framework. This would align with the base level requirements that currently apply to AFSL holders, and prevent any additional complexities that may arise from the application of two separate licensing regimes that are essentially similar and unnecessarily stifle innovation in the crypto space.

Question 13: Should 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? That is, should the CASSPrs 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)?

III. Financial Advice and Consumer Protection for Crypto Consumers

In response to Question 13, Caleb & Brown strongly object to any regulatory regime that introduces a blanket prohibition on the provision of personal or scaled advice in relation to crypto assets. In particular, by being unable to access regulated, trustworthy advice, Australian crypto consumers will be unable to properly align their risk tolerances with investment approaches and strategies in crypto assets. In Caleb & Brown's own interactions with crypto consumers, we regularly encounter situations where a consumer could be better de-risked and steered away from potentially fraudulent activity if Caleb & Brown were permitted to provide regulated financial advice around crypto assets. Further, relating to the Senate Select Committee's primary focus of analysing ways by which Australia could serve as a technology and financial centre, to prohibit the provision of personal advice in relation to crypto assets would be to limit the growth in terms of both employment and economic output of the crypto industry in Australia. Discussed below are the benefits of enabling a clear and coherent pathway for CASSPrs (or AFS licensed entities) to provide regulated financial advice around crypto assets.

a. Consumer protection

It is Caleb & Brown's contention that a blanket ban on the provision of personal or scaled advice in relation to crypto assets as a financial product would unnecessarily harm the industry and consumers in particular. Indeed, prohibiting the delivery of regulated personal advice is to further prohibit Australian consumers from accessing vital tools for consumer protection. Absent the ability of CASSPrs (or AFS licensed entities) to provide personal advice around crypto assets in a regulated context, consumers will be left without regulated options for licensed, reliable advice on crypto assets. This unmet need will undoubtedly encourage consumers to seek out overseas providers—who themselves are likely to be unregulated—or to seek locally unregulated advice, further exposing an already potentially vulnerable group to risky or fraudulent schemes in unregulated settings. Without the ability to give personal advice, even those licensed to provide general advice will not be able to take into consideration the personal circumstances of a crypto investor. In the context of crypto and traditional finance alike, it is this additional ability to take into consideration the idiosyncratic and personal circumstances of a consumer that allows a provider of advice to maximally de-risk a consumer, working with the consumer's personal circumstances to best tailor advice that matches that consumer's precise risk profile and tolerances.

b. Economic and jobs opportunities

Denying CASSPrs the ability to provide personal advice would be a missed opportunity to create specialised jobs catering to the needs of a growing consumer base in Australia. This would be antithetical to the vision of the Senate Select Committee, which was originally tasked to assess pathways to Australia operating as a technology and financial centre, attracting workers and corporate entities from other jurisdictions as well as retaining local, home-grown talent. Crucially, not only would this inability to provide personal advice contribute to the crypto and fintech brain drain in Australia, it would also drive customers to take their business to other jurisdictions; jurisdictions that do allow for and seek to actively regulate the provision of financial advice in relation to crypto assets on a personal level.[7] With the wealth of local talent in the industry, it is anathema to the object and aims of the Senate Select Committee, the Treasury's Consultation Paper, and even the Digital Services Act to position Australia as a late adopter of these emerging technologies, rather than as a first-adopter and innovator.

Rather, by regulating CASSPrs under the existing financial services regime, Australia would be able to capitalise on the unparalleled industry growth seen in crypto which has seen approximately 11,600 jobs introduced to the market as of 2021, with numbers predicted to grow up to 200,000 jobs over the next decade, provided appropriate regulation is in place.[8] Further, research points to the fact that approximately one-third (28.8%) of Australians already have or plan to invest in cryptocurrency. This suggests that not only is there the potential for significant growth in jobs within the crypto industry, but so too is there the potential for significant consumer adoption and interaction with the crypto industry, posing an opportunity for increased long-term economic growth in Australia.[9] In reviewing the proposed approach, Caleb & Brown submits that as an alternative to imposing a blanket ban that risks stifling industry growth, Australia should adopt an approach that encourages user adoption while simultaneously allowing for fair access to financial service providers to grow their businesses in a way that is both fair and safe for consumers.

c. Case Studies

As Caleb & Brown has shared with the Government through earlier calls for submissions, below are a number of case studies involving anonymised clients of Caleb & Brown. These case studies specifically address the risk posed by a lack of personal advice, focusing on the consumer and the degree to which a consumer's interests are adequately protected.

1. 'Jim' held 329,000 units of a top-30 crypto asset. While Caleb & Brown brokers were able to provide educational and factual information, mostly pertaining to current information around the token, these brokers could not legally provide general or personal advice to the client. This would be the case even if Caleb & Brown held an AFSL as, currently, the legislative and regulatory definitions of 'financial product' do not include crypto-assets. Jim made a significant gain on his holdings of the top-30 crypto asset, making $3.8m USD on a $200k investment. Caleb & Brown brokers were aware that this crypto asset's price performance was diverging independently from the underlying platform's user adoption. Quantifiable metrics analysed by Caleb & Brown brokers suggested that the crypto asset's price was trading much higher than existing competitors' crypto assets which themselves enjoyed magnitudes higher user adoption. Despite making these internal assessments, our brokers were unable to assist directing the client towards a more risk-sensitive position, instead limited to providing factual information with no opinion, recommendation, or suggestion. As such, Caleb & Brown brokers were unable to ensure that clients in Jim's position had fully interpreted the apparent overvaluation of the crypto asset. Further, Caleb & Brown brokers were unable to assess and act on the client's communicated risk tolerances and other personal circumstances in order to better de-risk the client. In this scenario, Jim was unable to be advised to liquidate his holdings at the $3.8m high, instead retaining his holdings which are now worth ~$880k. **The key opportunity lost here was the ability to limit the consumer's exposure to their unrecognised risk of a significant downturn in the asset's performance by providing the consumer with regulated, personal advice around crypto assets.**

2. 'Sabrina' sought to allocate $500k USD to a particular alt-coin across a number of purchases and, acting on Sabrina's instructions, Caleb & Brown actioned her order. While this coin passed Caleb & Brown's internal controls around token listing, it was nonetheless deemed high risk after internal assessment found the token exhibited poor use case adoption over time and degrading liquidity. Caleb & Brown brokers were able to provide only factual information—i.e., the token's liquidity and past performance—to Sabrina, but were unable to further explain why this factual information suggests the asset is high risk as to do so would constitute general advice. With only this baseline information, Sabrina still wished to place an

[7] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937/EC (24 Sep 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593; The work of the Financial Conduct Authority: the perimeter of regulation, UK Parliament (2 Aug 2019), https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/2594/259403.htm; Explanatory Brief, Financial Services and Market Bill 2022 (Singapore).
[8] Mawson and Ernst and Young, Cryptocurrency and the Distributed Digital Economy in Australia (Report, 10 December 2021) 23-26.
[9] Ibid 7.

allocation in the alt-coin, despite Caleb & Brown wishing to be able to further de-risk and educate the client. Indeed, by being prohibited from taking into consideration the consumer's personal circumstances, Caleb & Brown brokers were unable to position the crypto assets in question within the context of the consumer's accepted risk tolerances. **The key opportunity lost here was the ability to use the client's personal circumstances to provide in-depth information that would constitute financial advice in order to allow the client to make a more informed decision aligning with their risk-appetite.**

Question 15: Do you support bringing all crypto assets into the financial product regulatory regime? What benefits or drawbacks would this option present compared to other options in this paper?

IV. Crypto Assets as Financial Products

In response to Question 15, Caleb & Brown fully supports the introduction of a new category of financial products under the AFSL framework such that crypto assets and CASSPrs are able to be regulated under and through the existing financial services regime.

a. Achieving the Treasury's objectives without overlapping licensing regimes

A sweeping inclusion of all crypto assets into the existing financial services regime achieves the objectives and obligations raised in the Consultation Paper[10] without introducing cumbersome logistical, regulatory and legislative processes that likely would accompany the introduction of the regulatory regime as proposed in the Consultation Paper. An extension of the existing AFSL regime can be done efficiently, as entities, ASIC, and consumers alike are familiar with the AFSL framework and how an AFSL protects consumers' interests. In contrast, the proposed regime incorporates redundancies in that there are many areas of significant overlap between the proposed regime and the existing AFSL and Australian market licence regimes.[11]

The interaction between the two overlapping licensing regimes would result in unwanted inefficiencies and complexities, especially where CASSPrs already have an existing AFSL or where CASSPrs deal with both crypto assets that are financial products and those that are not. Most crucially, the introduction of an overlapping licensing regime would leave consumers confused as to what each mark of licensing means in terms of the protections available to a consumer. While the AFSL framework and marks of licensing have existed since the early 2000s, consumers would be required to understand and adapt to the newly introduced mark of licensing under the Consultation Paper or the Digital Services Act, with the potential that this new mark of licensing is not viewed by consumers as carrying with it the same degree of legitimacy as the existing AFSL mark of licensing.

b. Inherent crypto asset variability is incompatible with rigid token mapping

Further, the proposed approach requires CASSPrs to apply the findings of a token mapping exercise to determine the classification of each token. This is an arduous ask of CASSPrs, as crypto assets are inherently complex, non-binary creatures; many of the functions and purposes that a crypto asset intially serves may evolve, be added to or removed entirely as it is reprogrammed to perform other functions or to fulfill other purposes. In the context of a brokerage, characterising and classifying each crypto asset, in addition to ensuring that classifications remain current and accurate, introduces a significant ongoing cost for the entity which may itself transact in hundreds or thousands of different crypto assets. In the case of an exchange which may be dealing with magnitudes more individual crypto assets, classification and characterisation can become an overwhelming task. This issue is further compounded in both contexts by both the fact that the platforms and use cases related to crypto assets can develop and vary over time while there is simultaneously a continuous increase in the number of crypto assets in existence, resulting in a wide and unfixed set of use cases for crypto assets in this nascent industry. Specifically, the proposed token mapping approach would require increasingly continual amendments to include new classes of crypto assets to be added every time a novel use case is established and a similar, unrealistic level of oversight and management from CASSPrs to monitor each crypto asset every

[10] The Treasury, Crypto asset secondary service providers: Licensing and custody requirements (Consultation Paper, 21 March 2022) 14-17.
[11] Areas of overlap include the legal obligations under the Corporations Act 2001 (Cth) s 912A and 'key personnel' under AML/CTF Rules 2007 (Cth) chapter 27.2 (9). Note: Whereas the proposed regime addresses CASSPrs that deal with crypto assets that are not financial products, services provided in relation to crypto assets that are not financial products will continue to be regulated by existing AFSL and Australian market licence regimes. These entities will have to apply for/hold two different licences with similar legal obligations. Cf The Treasury, Crypto asset secondary service providers: Licensing and custody requirements (Consultation Paper, 21 March 2022) 16. Further, see ASIC, Regulatory Guide 172: Financial markets, domestic and overseas operators, May 2018

time its function or purpose is varied.

This is problematic in that the classes and categories of crypto assets can be neither definitive nor exhaustive particularly at this early stage in the industry's adoption, leaving the responsibility of assessing whether a crypto asset falls under a specific class up to the discretion of the CASSPr itself. Pivotally, this proposed regime could, therefore, engender a framework not unlike the current unregulated state; indeed, crypto entities and other stakeholders are currently raising the issue posed by legal uncertainty regularly when the Government has invited submissions.[12] Take, for example, the likely eventuality that a new class of crypto asset will soon be invented. In such a case, the new class would not be captured by the existing classifications of crypto assets and could effectively render existing crypto asset-related definitions inappropriate and no longer fit-for-purpose.

c. Expanding the AFSL framework to include crypto assets and CASSPrs

In its current unregulated state, the practices of the crypto industry still mirror those of traditional finance. As such, it would be unnecessary to depart from an already functioning, recognised, and reputable regulatory framework to accommodate a new class of assets. While it is important to recognise that crypto assets are not a homogenous asset, the range of services to be provided by CASSPrs mostly have appropriate corollaries in traditional finance and existing regulatory regimes and would be able to be efficiently captured by an updated AFSL framework as mentioned below. Such an approach would also best meet the existing focus within Australian corporate and financial services legislation that any legislative requirements are technology-neutral; indeed, the proposed parallel regime applying solely to CASSPrs appears to violate this maxim of technology-neutrality.

d. Specific legislative and regulatory amendments

Expanding the current AFSL framework to include crypto assets would realistically only require minor amendments to the definitions of 'financial products' contained within section 764A of the Corporations Act 2001 (Cth) and section 12BAA of the Australian Securities and Investments Commission Act 2001 (Cth). This is an eloquent solution that avoids the need for token mapping, thus removing the burden and risks associated with leaving the applicability of the regulatory regime up to the discretion of CASSPrs as previously explained, and simultaneously extends ASIC's jurisdiction to include CASSPrs and their activities. Crucially, adopting this broad approach of having all crypto assets fall under the umbrella of financial products avoids the central issue of uncertain and interchangeable token-mapping and classifications. Additionally, these legislative changes would permit ASIC to release relevant Regulatory Guides and Class Order in order to provide additional clarity on the exact method by which regulation and licensing is to occur as well as providing for any necessary new authorisations to accommodate the different categories of CASSPrs and their activities.

e. ASIC as the crypto asset regulator

It is Caleb & Brown's strong belief that leaving undisturbed the method by which ASIC grants different AFSL authorisations would represent best practice in Australia. Specifically, by expanding, through legislative means or other, the current AFSL framework to allow ASIC to provide for authorisations relating to advising, dealing in, and operating crypto asset exchanges (markets), the industry would be able to leverage a tried, measured, and reputable licensing framework as well as ASIC's proven track record in overseeing even the most risky of financial products.

Since its inception, Australians have come to recognise and acknowledge the AFSL as the hallmark for regulatory oversight of financial products and asset classes in Australia, indicating to consumers that the financial firm with which they are engaged is compliant in the eyes of the Government and its relevant regulatory bodies. In light of this view, ASIC's licensing framework has been relied upon by Australians as a guarantee of financial prudence and oversight for all other financial products; ASIC's proven track record has seen it successfully regulating even the riskier asset classes, such as contract for differences (CFD) and binary options, and where necessary, intervening beyond its licensing regime to issue intervention orders accordingly.

Further, this approach would ensure that a uniform regulatory framework applies across both traditional finance and crypto asset entities, and eliminates the need for a separate licensing regime specifically for CASSPrs due to the different mode of technology used. This is consistent with ASIC's stance that legislative obligations and regulatory requirements are meant to be technology-neutral and apply irrespective of the mode of technology being used to provide a financial service.

[12] Senate Select Committee on Australia as a Technology and Financial Centre, Parliament of Australia, Final Report (Report, October 2021) 33-5.

Finally, Caleb & Brown notes that, while we strongly supports the introduction of a new category of financial products under the AFSL framework such that crypto assets and CASSPrs are able to be regulated under and through the existing financial services regime, the rigid enforcement of the financial services regime ought only to apply after a sufficient transition period, allowing time for legitimate industry participants to coordinate their compliance and licensing methods, to the extent they are necessary.

Caleb & Brown suggests that any transition period is best structured such that registration under any incoming regime may become mandatory prior to strict and widespread enforcement of the resulting regime's requirements. Such an approach ensures that crypto industry participants seeking to act in good faith and in compliance with any incoming regulatory requirements are captured through registration, while appropriately acknowledging that compliance with the regime itself will require additional time.

Any sufficient transition period must further acknowledge the reality that full compliance with the existing financial services licensing regime can only be achieved once APRA-recognised professional indemnity insurers or underwriters are accessible to crypto industry participants. In the alternative, should incoming obligations including licensing requirements come into effect before professional indemnity insurers or underwriters are engaging with crypto industry participants or other requirements under the regime are not practically achievable, these requirements ought to be exempted until such a time as the requirements in question are practically achievable.

With this overview, Caleb & Brown respectfully submits its feedback on the Consultation Paper to the Department of Treasury for further consideration.

We thank the Treasury for the opportunity to provide comments in relation to some of the issues highlighted in the Consultation Paper, and fully support the Government's efforts to introduce regulation that fosters innovation, competitiveness and growth in the crypto scene.

Yours sincerely,

Jackson Zeng
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