27 May 2022

Director – Crypto Policy Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

CASSPR LICENSING AND CUSTODY CONSULTATION

Dear Ms Raman and the Crypto Policy Unit Team

This letter sets out my feedback regarding your Consultation Paper dated 21 March 2022 entitled "Crypto asset secondary service providers: Licensing and custody requirements" (the "Paper").

A. CONTEXT

The Paper resulted from extensive engagement with industry, including hundreds of submissions and discussions. With that input, the Paper put forward certain policy settings after carefully assessing why and how to regulate crypto assets in Australia.

It is important for taxpayers that the collective work that went into the Paper is not wasted.

B. CONSULTATION QUESTIONS

1. CASSPr is a better definition than 'digital currency exchange'.
2. CASPr is an alternative. There is no need to emphasise 'secondary'. The definition can clarify that issuance of crypto assets is excluded.
3. Yes.
4. Yes.
5. No carveout.
6. Yes.
7. Two policy objectives: (i) to 'promote the confident participation'[1] in crypto assets by Australian investors, and (ii) to avoid creating 'unnecessary procedural requirements'[2].
8. Yes.
9. Any crypto assets.
10. The regime should clarify that it will apply to the exclusion of other financial services laws. This could be done by specifying that, for the purposes of the Corporations Act, a crypto asset is not a financial product other than for the purposes of CASPr regime.
11. Yes.
12. Yes. The regime rules work as long as CASPrs are licenced as 'shopfronts' for investors buying and selling, depositing and/or borrowing crypto assets. If CASPrs are licensed to provide additional services, such as airdropping, certain additional rules would need to be specified, which will clutter and weaken the effectiveness of the core rules.
13. Ditto answer to 12.
14. The cost will be reasonable and non-prohibitive, as long as the capital requirements specify that certain crypto assets may be held as capital, subject to valuation 'haircuts'.

[1] Mirroring the wording in section 1 of the ASIC Act.
[2] Ditto.

15. No. Benefits include widespread consistency with the financial services laws in their current form, however those benefits are outweighed by the drawbacks of applying 'square peg' rules to 'round hole' crypto assets.
16. The cost would be prohibitive.
17. No. The proposed licensing regime is better.
18. I have not conducted a cost assessment because self-regulation will not be sufficient to 'promote the confident participation' in crypto assets by Australian investors.
19. None, as long as the capital requirements specify that certain crypto assets may be held as capital, subject to valuation 'haircuts'.
20. No.
21. Yes. Regulated custodians should be Australian entities, even if they are permitted to sub-contract custody services to overseas providers, while retaining primary responsibilities under the licensing obligations.
22. Yes.
23. Yes, risk assessments along the lines of System and Organization Controls (*SOC) 2* reports should be required to be made available for inspection.
24. The cost will be reasonable and non-prohibitive.
25. No.
26. The safekeeping of crypto assets should not be left to self-regulation alone.
27. Not a failure per se, but widespread variability of standards.
28. Ditto answer to 18.

The Paper contains well considered policy settings.

My recommendation is: *do not fix it, as it is not broken.*

Neither the recent volatility in crypto asset markets, nor the UST/LUNA collapse, warrant any change to the policy settings.

Yours Sincerely

Fred Pucci[3]

Cc to:

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