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Consultation on Crypto Asset Secondary Service Providers

Revolut Payments Australia Pty Limited (**Revolut Australia**) welcomes the opportunity to comment on Treasury's consultation paper on the proposals and options to support minimum standards of conduct by crypto asset secondary service providers (**CASSPrs**) and safeguards for consumers.

Revolut Australia engaged in the inquiry of the Senate Select Committee On Australia as a Technology and Financial Centre, making a submission to the Committee's third issues paper and appearing before the Committee in August 2021. This submission will focus predominantly on Treasury's proposed framework of the new regime and the proposed obligations of CASSPrs.

1. **Revolut Background**

Revolut Australia is part of the global Revolut group (**Revolut**), a financial technology group of companies offering financial services to both retail and business customers. Revolut was founded in 2015 in the UK and now has over 18 million retail customers globally, 500 thousand business customers and approximately 3,000 employees.

Revolut Australia received its Australian Financial Services Licence (**AFSL**) in May 2020 and has since been building its presence in Australia. It received its Australian Credit Licence in February 2022 and is in the application process for an Australian banking licence.

Revolut Australia has been offering its crypto exchange service (which is not considered to be a financial product under the Corporations Act) to its customers since late 2020. Revolut Australia welcomes the introduction of an appropriate Australian regulatory framework to help enhance consumer protection, support the AML/CTF regime, and provide certainty about the regulatory treatment of crypto assets.

2. **Proposed definition of ‘crypto asset secondary service providers’ and ‘crypto assets’**

Revolut Australia agrees that the term ‘digital currency exchange’ is not broad enough to capture all service providers that should be regulated under the contemplated regime. We agree that the providers described in the proposed definition of CASSPr should be captured by this regime.

We also agree with the proposed definition of ‘crypto asset’ and that this definition should be applied across all Australian regulatory frameworks. One consistent definition used across Australia’s regulatory frameworks will help provide industry and consumers with the necessary clarity required in determining their respective obligations and rights.

3. **Policy principles and scope**

Revolut Australia agrees with the distinction made between crypto asset issuers and service providers who facilitate consumer access to them, in particular that there is an inherent element of trust placed in service providers by consumers that should be protected through appropriate regulation.

Further to this, we agree that crypto assets that currently meet the definition of financial products should continue to be regulated as such and the Australia financial services licensees (**AFS licensees**) that offer them should not be subject to an additional licensing regime. This approach is consistent with the principles that regulatory duplication should be minimised and that regulation should be applied with a technology neutral lens. While a duplication of regimes should not apply, it may be appropriate to extend some crypto asset specific obligations to financial products where sufficient coverage does not currently exist under the financial services regime. For example, the custody obligations proposed by Treasury (discussed in more detail in section 7 below) should also apply to crypto assets that are financial products in circumstances where the custody obligations under the Corporations Act do not already apply.

The proposed framework must also consider the issues of regulatory duplication that would arise for CASSPrs that offer crypto assets that are not financial products and would be captured by this regime, as well as other financial products that are regulated separately under the financial services regime (this is discussed in more detail in section 4 below).

4. **Proposed licensing framework and obligations on CASSPrs**

Revolut Australia supports the obligations proposed by Treasury, which largely mirror some of the general obligations imposed on AFS licensees under s912A of the Corporations Act. Revolut Australia generally agrees that these obligations are appropriate and will be effective in achieving the policy principles and objectives set out by Treasury in its paper, subject to the caveats outlined below.

a) **Consistency with upcoming ALRC reforms**

The Australian Law Reform Commission (**ALRC**) is currently reviewing the financial services legislative framework, to promote better understanding and general

compliance with the law. As part of this work the ALRC has proposed that the current obligation to act “efficiently, honestly and fairly” be amended by, among other things, replacing the word “efficiently” with “professionally”.

Recommendation 1: Treasury should ensure that the general conduct obligations it proposes are consistent with the changes being made to the financial services legislative regime, leveraging the work being conducted by the ALRC in clarifying this area of the law.

b) Responding to scams

The proposed obligation to “respond in a timely manner to ensure scams are not sold through their platform” may impose undue burden on CASSPrs, particularly in the way the obligation is currently drafted. A specific obligation to take proactive steps to ensure consumers are not subject to scams does not exist in any current area of financial services law. However, all service providers generally have an inherent interest in taking reasonable steps to manage the financial and non-financial (including reputational) risks that impact their business. The possibility that scams are sold through a CASSPrs’ platform could be considered one such risk, which should be appropriately mitigated through the implementation of an effective risk management framework. This is adequately addressed through a number of other obligations proposed by Treasury including for CASSPrs to “maintain adequate technological, and financial resources to provide services and manage risks” and to “do all things necessary to ensure that the services covered by the licence are provided efficiently, honestly and fairly”.

Recommendation 2: Revolut Australia does not agree with imposing a specific obligation on CASSPrs to “respond in a timely manner to ensure scams are not sold through their platform”. However, if such a requirement is to be imposed, it should be rephrased so that CASSPrs are instead required to “take *reasonable steps to prevent* scams from being sold through their platform” (reasonable steps may include responding in a timely manner).

This may help achieve a greater balance between protecting consumers from the risks unique to crypto asset services and reducing undue burdens on CASSPrs in providing those services, which are not imposed on other financial service providers.

c) Duplication of AFS and ADI licensee regulatory obligations

There are considerations made under the Corporations Act for AFS licensees who are also APRA regulated entities to minimise duplication of regulatory obligations. Specifically, the s912A requirements on AFS licensees to have adequate available resources and adequate risk management systems do not apply to most entities regulated by APRA in recognition of the fact that those entities are subject to similar, if not more extensive, prudential obligations.

Recommendation 3: If a new licensing regime, separate to the financial services regime, is created to regulate CASSPrs, provisions should be included to exempt CASSPrs who are also AFS licensees and/or ADIs from obligations that they are

simultaneously subject to under those regimes. This will minimise unnecessary regulatory duplication and provide greater clarity to those entities on their obligations as they relate specifically to crypto assets.

d) Airdropping

In response to question 12 of the paper, further clarity is sought to confirm what activity is specifically being referred to in relation to this term. However, 'airdropping' can be used for legitimate marketing purposes for example, to help increase awareness of a new token. If the regulatory framework proposed is adopted, a number of the proposed obligations would help achieve mitigation of the risks that may arise in reference to 'airdropping'.

e) Personal advice

An advice framework for CASSPrs has not been considered in the proposed regime, however, in response to question 13 of the paper, Revolut Australia does not recommend that CASSPrs be prohibited from providing 'personal advice' (as defined under the financial services regime) in relation to crypto assets. A key policy objective in creating a legislative framework for the provision of crypto asset services is to provide confidence to consumers about the services CASSPrs offer and to improve the reputation and credibility of the sector. Issuing a blanket prohibition over such activities may undermine the effectiveness of the legislative framework being built.

Furthermore, many consumers benefit from the provision of personal financial advice, provided that it is appropriately provided. Banning CASSPrs from providing this service may lead to consumers making less appropriate crypto asset investing decisions.

Recommendation 4: Rather than impose a prohibition on the provision of personal advice, Treasury should more broadly consider whether an 'advice' regime is appropriate in the context of crypto assets and how it should apply to CASSPrs.

5. Alternative option one: The financial services regime

Bringing the regulation of crypto assets under the existing financial services regime would also achieve a number of the outcomes sought by Treasury. In particular, there are additional protections afforded consumers under the financial services regime that they would not benefit from under the proposed CASSPr framework, including obligations relating to:

- the design and distribution of financial products;
- the provision of financial product advice;
- disclosure requirements; and
- the unconscionable conduct and consumer protection provisions under the ASIC Act.

Significantly, the aforementioned obligations aim to protect consumers from the risks of being mis-sold certain products either due to poor disclosures from financial service

providers and/or a consumer's lack of understanding of the nature of the product they have obtained.

The proposed regime also does not benefit from the product intervention powers that allow ASIC to temporarily intervene in a variety of ways when there is a risk of significant consumer detriment. This tool in particular could be of significant assistance in quickly responding to unforeseen problems that may arise given the dynamic nature of crypto assets.

While the financial services regime would likely achieve the highest level of consumer protection and generate the most consumer confidence, it is also the most onerous of those proposed and would likely involve higher compliance costs for CASSPrs who do not provide other financial services. However, for CASSPrs that already hold financial services licences (including Revolut Australia) the extension of the existing framework may involve less compliance costs than a new regime as businesses may be able to link the requirements into their existing AFSL compliance programs.

6. **Alternative option two: Self-regulation by the crypto industry**

Revolut Australia supports a framework that, among other things, establishes an authorisation body and application system, and mandates a set of standards and principles that must be complied with. Developing a voluntary code of conduct for CASSPrs would present a number of advantages, primarily that crypto asset expertise would potentially be more readily leveraged and a code could be established more quickly than creating a new legislative framework or integrating with the existing financial services framework.

However, a voluntary code of conduct would not be as effective in achieving the key policy objectives of mandating minimum standards of conduct for the business operations of CASSPrs and dealing with retail consumers. If minimum standards of conduct are not mandated across all participants, this may undermine the legitimacy of the entire sector and consumer interests may not be as effectively and consistently protected.

Self regulation would be more effective if participation was mandatory. Such a framework exists and has been successful for the Australian payments sector. There could be some merit in a hybrid system where an industry body sets certain standards but ASIC remains responsible for enforcement.

Recommendation 5: Revolut Australia supports a regulatory framework that establishes a licensing regime or authorisation scheme with a mandatory set of obligations or principles that is overseen and enforced by a regulatory body. If a self-regulatory style framework is implemented, this should be in the form of an authorisation scheme where participation is mandatory.

7. **Proposed custody obligations**

a) **Relevant scope**

Revolut Australia generally supports the obligations proposed by Treasury to introduce mandatory principles-based obligations for CASSPrs that hold or store

private-keys (including via third parties) on behalf of consumers. The obligations proposed are extensive and sufficient. It is important, however, that these obligations are applied in a manner that is proportionate to the nature, scale and complexity of each entity's operations to ensure such onerous obligations do not stifle competition and innovation.

It is unclear whether the proposed custody obligations are intended to apply to all CASSPrs (including those that offer crypto assets that are also financial products). The obligations proposed are principles-based and designed to offer appropriate levels of consumer protection in relation to the risks relevant to custody. As outlined earlier in this submission, it may be appropriate, therefore, to apply the proposed custody obligations to crypto assets that are financial products, if there are potential circumstances where the custody obligations under the Corporations Act would not apply.

Recommendation 6: The proposed custody obligations should apply to all crypto assets, including those that are financial products, if they are not otherwise subject to the custody obligations under the Corporations Act.

b) Domestic location requirements

In response to question 21 of the paper, Revolut Australia does not consider it necessary to mandate domestic location requirements for custodians. This requirement would potentially restrict entities from being able to leverage best practice globally. Such a mandate would also assume that Australia has better practice and protection than any other country.

Recommendation 7: Domestic location requirements should not be mandated for custodians. Alternatively, legislation could provide that custody must be domiciled in a country with no lesser protections than Australia. Similar provisions exist for the cross border transmission of personal information under the Privacy Act.

8. Conclusion

We hope our comments within this submission have been useful and would be pleased to further discuss any aspects of this submission or our business.

Yours sincerely



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