Regulating Digital Asset Platforms

Proposal paper

October 2023

Contents

Consultation Process

Request for feedback and comments

The purpose of this paper is to seek feedback on the questions contained within. Submissions may be lodged electronically or by post. Electronic lodgement via email to crypto@treasury.gov.au is preferred. For accessibility reasons, please submit responses sent via email in Word and PDF format.

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate. Nothing in this paper is legal advice.

1. Introduction

1.1 Overview

The Government is working to introduce a regulatory framework for entities providing access to digital assets and holding them for Australians and Australian businesses. The reforms target identified consumer harms, while supporting innovation in the uses of digital assets and emerging technologies.

The proposed regulatory framework would apply to digital asset service providers that present similar risks to entities that operate in the traditional financial system. It seeks to leverage the Australian Financial Services Licence (**AFSL**) framework to regulate digital asset service providers to ensure consistent oversight and safeguards for consumers.

This paper has seven parts:

- Part 1: **Introduction** – explains the objectives of the reforms and the policy problem being solved.

- Part 2: **Regulating digital asset intermediaries** – outlines a proposed regulatory framework for digital asset facilities, including its scope, structure, and focus.

- Part 3: **Licensing digital asset intermediaries** – describes a mix of standard and tailored licensing obligations that would apply to service providers in relation to digital asset facilities.

- Part 4: **Minimum standards for facility contract** – describes the proposed requirements for structuring a digital asset facility, including custodial and reporting rules.

- Part 5: **Minimum standards for 'financialised functions'** – describes the specific activities that would require compliance with additional rules.

- Part 6: **Other activities** – explores some activities that may be included in the future.

- Part 7: **Next steps** – outlines future milestones in relation to this proposal.

This paper seeks feedback on the proposals and their underlying assumptions, and on the specific focus questions identified in blue boxes throughout the paper.

Note

The implementation of the proposed framework is subject to future legislative design and development. References to amending existing legal frameworks are demonstrative of policy intention. The focus of this paper is to seek feedback on the policy of the framework.

The regulatory framework proposed in this paper does not intend to address anti-money laundering and counter-terrorism financing (AML/CTF) requirements. Businesses providing digital currency exchange services, as set out in the AML/CTF Act will continue to be required to register with AUSTRAC. A separate consultation being led by the Attorney-General's Department is currently considering expanding the range of digital asset related services that are subject to AML/CTF regulation in line with global Financial Action Task Force Standards, including the requirement for businesses providing such services to register with AUSTRAC.

References to ASIC regulatory guides throughout the paper are included as further information.

Objectives

The objectives of the proposed framework include:

- protecting consumers;

- promoting innovation through technology neutrality and regulatory clarity;

- aligning Australia's digital asset regulatory framework with international jurisdictions, where appropriate; and

- utilising regulatory tools that provide agility, flexibility, and adaptability.

1.2 Understanding the policy problem

Key risks and harms

The consumer harms associated with digital assets have centred around the vulnerabilities of intermediaries. The business model shared by the intermediaries responsible for these harms is a 'multi-function platform that holds assets for customers' (**digital asset platform**).[1] Intermediaries in the digital asset ecosystem are almost universally structured as digital asset platforms. This includes all the dominant players in the digital assets market, both in the volume of transactions they process and the size of the customer base they serve. It also appears to include most 'brokers' and even intermediaries holding non-digital assets as part of an 'asset-backed token' arrangement.[2,3]

Recent failures of digital asset platforms have led to considerable consumer losses.[4] For instance, the collapse of FTX alone affected approximately 50,000 Australian consumers.[5] The common factors among these failures were: (i) significant loss of assets held on behalf of customers; (ii) ineffective management practices; (iii) inadequate governance structures; (iv) poor operational resilience; (v) instances of fraudulent activities; and (vi) widespread conflicts of interest.

The failures of digital asset platforms are symptomatic of unregulated asset holding intermediaries. Such risks are further amplified by the vertically integrated nature of digital asset platforms – where various functions, like trading and holding assets, are managed within a single organisational structure. While the risks that led to these failures are the same risks mitigated by Australia's financial services

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1   In the financial services context, platforms are 'administrative services made available by intermediaries for the holding, dealing and viewing of investments selected by individual investors. They provide the capability for investors to choose investment products and generally offer a range of tools to analyse investment portfolios' – Murray Inquiry Final Report, 2014.

2   This is because many 'brokers' that deal in digital assets do not transmit orders to a market in the same way as brokers in traditional finance. Rather, they act like agents in facilitating a transaction for their customers on third-party digital asset platform (i.e. on their own account) before remitting the tokens back to a digital asset platform they provide to their customers.

3   An asset-backed token arrangement would typically involve an intermediary holding assets and issuing entitlements to those assets. The entitlements are attached to tokens, which can circulate outside the platform. The close similarities between these arrangements and a typical digital asset platform are discussed further in the paper below.

4   The approximate total (global) value of bankruptcy claims at the time of collapse were: FTX (USD 9 billion), Genesis (USD 3.4 billion), BlockFi (USD 1.3 billion), Voyager Digital (USD 1.3 billion), Celsius (USD 1.2 billion), Babel Finance (USD 280 million), Hodlnaut (USD 193 million).

5   KordaMentha, 'Token mapping: Response to Treasury consultation paper', March 2023.

laws, digital asset platforms that do not deal in financial products are not subject to financial services laws.

The Government intends to introduce a regulatory framework aimed at addressing the significant risks and potential harms associated with digital asset platforms, while fostering innovation and safe usage of digital assets and distributed ledger technology. The framework outlined in this paper proposes to regulate digital asset platforms within the existing Australian financial services laws, while ensuring all consumers and businesses have the opportunity to safely explore and share in any benefits of the technology.

Key terms and concepts used throughout this paper

Understanding the policy problem and the proposed regulatory solution requires an understanding of several key concepts and terms that are used throughout this paper. These concepts and terms aim to reduce the complexity of the paper's content, which necessarily covers topics across industries, technologies, and regulatory frameworks. They include some broad generalisations for descriptive convenience and some precise technical descriptions for topics stakeholders have identified as causing regulatory uncertainty.

An **entitlement** refers to any kind of right, benefit, or claim flowing from any kind of contract, understanding, scheme, or convention. It is used in a broad, non-legal sense. For example, a 'bond' represents an entitlement to interest payments and return of capital. The *issuer* of the entitlement is the company with obligations to pay the interest and return the capital. Entitlements may or may not be recorded in a *system of record*.[6]

A **system of record** refers to any authoritative store of information used to record entitlements. This paper refers to two types of systems of record: *account-based systems and* *token-based systems.*

- An **account-based system** refers to entitlements that flow to a specific person identified in a record (i.e. an account). It is used in a broad sense to refer to accounts, registries, depositories, lists, etc. For example, a 'securities depository' (for a bond) and a 'guest list' (for access to an event).

- A **token-based system** refers to entitlements that flow directly to any person holding a specific record (i.e. a token). For example, a 'bearer bond' (for interest payments and return of capital) and an 'event ticket' (for access to an event).

A **token** is a record in a token-based system. The fundamental characteristics of any token are that it: (i) can be 'held' by a person; and (ii) is hard to counterfeit. Broadly, physical token-based systems use physical objects with special markings or materials to achieve this. Nowadays, any person can create

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6   For example, owners of most physical goods are 'entitled' to hold them, sell them, etc, without ownership being recorded. Many types of contractual arrangements, including written and verbal, are not recorded in systems of record.

any number of counterfeit resistant 'digital objects' *that have the characteristics of physical objects.*[7] These characteristics include the ability for the digital objects to be 'held'.[8]

The proposals in this paper do not relate to digital 'token-*like'* systems. Examples of token-*like sy*stems are event tickets or gift cards *delivered by email*. Like tokens, these tickets and gift cards provide entitlements that flow to any person with access to them. They can also be transferred digitally and may even be cryptographically signed for authenticity. However, a competitive ecosystem of third-party marketplaces is unlikely to develop around them. This is because they cannot be 'held' in the same way as physical tokens. The 'token' in a token-*like* system is just information. After selling the 'token', a seller still has that information. They could sell it again. And then they could use it themself after receiving payment from both buyers. The same entitlements attached to a true digital token (i.e. a crypto token) would not have these issues.[9] **This difference is the foundation of the digital asset ecosystem**.

A **digital asset** refers to a token and its associated entitlements (i.e. a digital 'bearer asset'). This replicates the record/entitlement distinction used in physical token-based systems and account-based systems. For example, entitlements to interest payments and return of capital can accrue to an account holder (for a bond) or a token holder (for a bearer bond). In both examples, the entitlement is the primary asset. In the case of the bearer bond, the physical token (the paper) and its associated entitlement (payments and capital) collectively constitute a 'bearer asset'.[10] The same logic applies to digital assets, where the *digital* token takes the place of the paper, but the entitlement is still the primary asset.[11]

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7   Standardised token templates can be published to 'shared databases' of certain types of distributed computer systems. These systems (sometimes referred to as 'distributed ledger technology' or 'crypto networks') combine common cryptographic, technological, and economic elements in a specific manner. While these 'digital objects' are technically recorded using an account-like data structure, on some shared databases they have the characteristics of physical tokens for all practical and policy relevant purposes. For discussion on how the systems operate, see *Federal Reserve Bank of New York*, Liberty Street Economics, '[What makes cryptocurrencies different](#)', 16 August 2023).

8   'Holding' a token means that a person (or people) can have 'factual control' of the token. 'Full factual control' means positive control (a factual ability to use, dispose of, or transfer an asset) and negative control (a factual ability to exclude others from using the asset). For detailed consideration of the concept of holding in relation to digital tokens, see UK Law Commission, [Digital Assets: Final report](#), 27 June 2023, Chapter 7: intermediated holding arrangements.

9   The ability of a true digital token to be 'held' means it can be accepted as payment by anyone (if there is a liquid market), subject to legal encumbrances (as part of an asset holding arrangement), and subject to technical encumbrances (like a smart contract locking mechanism). This means a variety of digitally delivered services can be performed in respect of any entitlement.

10   The 'paper' is also tangible property in its own right.

11   While the token component of a digital asset is not quite 'tangible' property (like the token component of a bearer bond) and not quite 'intangible' property (as outlined in the token mapping paper), it is treated as property in some legal context. Some tokens, like bitcoin, provide a holder with an entitlement to 'factual control' of a token and nothing else. In this case, it is the token itself the market ascribes value to.

Challenges in regulating token-based systems

Tokens can be used to record entitlements to any type of product or service.[12] For example, the holder of a token could be entitled to entry into an event (non-financial product) or to interest payments and return of capital (financial product). There is nothing per se about entitlements recorded in token-based systems that makes them more complex to assess against the financial product definitions. The system of record is not a factor.[13]

However, token-based systems do involve other well-known legal complexities. For example, ownership versus possession. A person that steals a token (for example, a ticket or a bearer bond) is not its legal owner. However, that person has possession (factual control) of the token and can benefit from the token's entitlements. In an account-based system, safeguarding the integrity of entitlement records is the responsibility of a service provider subject to one or more regulatory frameworks. In token-based systems, the responsibility to secure the equivalent records (the tokens) is shifted to the holders of the entitlements. While some of the challenges historically associated with bearer assets are mitigated by the public audit trail left by digital asset transactions, these complexities still have policy implications for regulation.

There are additional and new policy challenges associated with the widespread use of *digital* token-based systems. For example, digital tokens can be used to transfer the value of any entitlements quickly and globally. In addition, marketplaces and applications worldwide can be created to accommodate any entitlements so long as the token is in a standard form. While this has unlocked a competitive ecosystem of service providers and application developers, it has also led to heavy 'financialisation' of non-financial entitlements. For instance, liquid markets now exist to trade or borrow against 'entitlements to computational and data storage capacity' and 'entitlements to use a digital sword in a video game'.

The reforms proposed in this paper aim to accommodate a future where an increasingly diverse range of entitlements are recorded in token-based systems (i.e. 'tokenised').[14] The reforms would address the financialisation of non-financial entitlements by requiring those that facilitate it to be (or become) financial service providers. However, it proposes that issuing an entitlement be largely subject to the same rules whether that entitlement is recorded in an account-based system or a token-based system. The aim of this simple framework is to protect consumers while ensuring appropriate guardrails are in place within which to safely foster innovation.

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12   This was a primary finding of the 'Token Mapping' process. Categorising all tokens is a similar exercise to categorising all possible arrangements, agreements, and understandings. In addition, tokens can also be used simply to record data (such as messages). This makes tokens more of a generalised transferrable medium (like paper) than a distinct asset class.

13   Although, it may still be a factor under other provisions in the financial service laws. For example, there is a prohibition on issuing 'bearer shares'.

14   Citigroup, 'Money, tokens, and games: blockchain's next billion users and trillions in value', 2023.

Info Box 1   Comparing structures of token-based and account-based marketplaces

The marketplaces that have been built for entitlements recorded in token-based system (**token marketplaces**) have tended toward a different structure from most marketplaces designed for entitlements recorded in account-based systems.

A primary difference arises because a token-based system, by definition, has no custodian of records. The token *is* the record for an entitlement that accrues directly to the token holder. A token marketplace is a 'bring your own' asset marketplace. In order to transact, a participant must fund an account by transferring tokens to the marketplace operator. This is a type of '*in-specie*'[15] transfer.

Once the operator receives the tokens, it creates or updates an account entry to record its obligation to return those tokens in future (i.e. the operator becomes the token holder (temporary custodian), and the participant becomes an account holder with an 'entitlement to their tokens on request' (via an *in-specie* transfer out)).[16]

Marketplace operators can facilitate any transaction between two or more (funded) account holders via internal 'netting' or 'netting off'. In this case, 'netting off' means updating the account entries to reflect the outcome of a transaction. This alters the operator's *own* obligations to return tokens to the parties. The tokens remain with the operator and do not move to reflect transactions.

The benefit of this fully funded netting off model is instant settlement.[17] Another commonly cited benefit is the minimised risk between transaction parties. They cannot be exposed to each other's defaults. However, until such time as the parties exercise their entitlement for the return of their tokens, they are exposed to the marketplace operator as temporary custodian.

These benefits described above would apply equally to an in-person marketplace for *physical* tokens.

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15   An in-specie transfer is a term used in financial services referring to transferring an asset to someone else without selling the asset. It means the asset is transferred 'in its actual form'. This concept is central to the digital asset ecosystem.

16   This foundational structure is similar to an 'investor directed portfolio service', a business model known as a 'platform' in the Australian financial services industry.

17   This is similar to the concept of 'delivery vs payment using a real time gross settlement model' (DVP1) for securities settlement. For a description of securities vs tokenised securities settlement, see Bank for International Settlement, On the future of securities settlement, BIS Quarterly Review, March 2020.

Info Box 1   *continued*

The programmability of digital tokens increases the uniqueness of token marketplaces further. For example, standards have emerged for creating tokens that can follow the deterministic rules and logic of automated marketplaces created by any third party. These rules can be encoded directly and publicly onto the ledger where the token itself is recorded.[18] Automated marketplaces may be public, private, managed by an intermediary, or intermediary-less. They show promise in reducing exposure to credit risk, fraud risk, and performance risk.

While token marketplaces present a distinct structure promising benefits flowing from rapid settlements and programmability, they come with additional challenges and risks, notably the vertically integrated digital asset platform model. The regulatory model proposed in this paper aims to accommodate the natural market structure and emerging technologies used for token marketplaces. However, this necessitates imposing strong regulation on the riskiest, foundational parts of the business model. This aims to provide Australians with safe and secure platforms to explore any efficiency and productivity benefits of token-based transactions.[19]

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18   For commentary on programmability see *Bank for International Settlements*, BIS Bulletin No 72, The tokenisation continuum, 11 April 2023.

19   For a discussion on possible efficiency and productivity benefits associated with tokenisation generally, see *McKinsey*, Tokenization: A digital-asset déjà vu, 15 August 2023.

2. Regulating digital asset intermediaries

2.1 Mitigating harms for the riskiest activities

The Government proposes to incorporate digital asset platforms and other intermediaries within the existing financial services framework. This will involve introducing a new type of financial product called a '**digital asset facility**'.

The proposed framework adopts the 'similar activity, similar risk, same regulatory outcome' approach. It proposes to achieve *consistency with the international community* by bringing specific activities into the regulatory perimeter. It proposes to use *asset holding as the regulatory anchor point*.

Consistency with the international community

International bodies such as the Financial Stability Board (**FSB**) and International Organisation of Securities Commissions (**IOSCO**) have made recommendations that aim to ensure a level-playing field between traditional and emerging financial intermediaries. In Australia, the financial services laws already apply to digital assets that are financial products, meaning the AFSL framework applies to any business providing financial services in relation to those digital assets.

However, many digital assets are not financial products. This includes some digital assets used in non-financial industries such as video gaming, media and entertainment, health care, fitness and lifestyle, and gambling. It also includes some digitally native assets that are technical components in computing network infrastructure,[20] or social network infrastructure.[21] There are also some digital assets that do nothing and others that were created for harmful purposes such as scams.

International bodies have endorsed an 'activities-based' approach to establishing a global baseline for digital asset regulation.[22] The activities-based approach targets risks by regulating specific activities that involve those risks. In the case of digital assets, these specific activities are sometimes referred to as 'financial services'.

In Australia, the concept of a 'financial service' has a conflicting meaning.[23] However, regulating the target 'activities' can be achieved by introducing a new financial product into the *Corporations Act 2001 (Cth)* (**Corporations Act**). The financial product would not be a transferable instrument (like a share or a bond). It would be a non-transferable facility (like a non-cash payment facility or a margin lending facility).

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20   For one type of example, see Treasury, Token Mapping Consultation Paper, Annexure 2: Public crypto networks.

21   For example, tokens that record messages as part of a decentralised social media protocol (see Lens Protocol, lens.xyz).

22   *IOSCO*, Policy Recommendations for Crypto and Digital Asset Markets: Consultation Report, May 2023; *FSB*, High-level Recommendations for the Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: Final Report, 17 July 2023.

23   A 'financial service' is any one of a list of broad services that are 'financial' because they involve a 'financial product'. For example, the financial service of 'dealing' covers business involved in buying and selling 'financial products'. The same services are just usual commercial activity when no financial product is involved.

Asset holding as the regulatory anchor point

While it would be possible to target activities (e.g. token trading) by applying the existing rules for the closest analogous activity (e.g. licensing framework for markets, and clearing and settlement), this approach may fall short in balancing consumer protection and innovation. Given the unique structure of token marketplaces, wholly applying the existing frameworks may target the wrong risks and fail to accommodate potential benefits.[24]

However, there is one activity across the digital asset ecosystem with risks and benefits that are not unique. That activity is 'asset holding'. In financial services, asset holders are regulated to mitigate conflicts of interest, credit risk, fraud risk, performance risk, and technology risk.[25] Holding digital assets, or holding assets backing digital assets, is largely unregulated.

With several hundred billion dollars of token-linked entitlements held for consumers globally, asset holding arrangements are pivotal points of vulnerability from a technology, counterparty, and fraud risk perspective. In addition, digital asset platforms are the primary gateway between the digital asset ecosystem and the broader economy, including the Australian financial system. This places digital asset platforms in a position akin to financial service providers. Accordingly, it is appropriate to apply the financial services laws to their activities.

The Government proposes that the business of holding significant values of digital assets, or assets backing digital assets, should be a regulated activity. Under the regulatory model outlined in this paper, the asset holding arrangements used by digital asset platforms would be regulated as a new 'digital asset facility'. These arrangements would have to meet the minimum standards that apply to existing financial products and services that involve an asset holding arrangement.

2.2 Scope of the proposed framework

Digital asset platforms

Typically, an asset holding arrangement involves a customer transferring an asset to a service provider in return for some type of 'right' to receive their asset back in future.[26] This paper uses the term '**platform entitlements**' to refer generally to these 'rights'.

A digital asset *facility* will be an asset holding arrangement. In addition to arrangements simply for holding digital assets for another person (**custody only arrangements**), the proposed framework would apply minimum standards to digital asset *platforms*. A digital asset platform is a multilateral digital asset facility, where multiple customers transact in platform entitlements. The following generalisations are used to describe the transactional functions covered by the proposed framework:

- platform entitlements are *issued* by a platform when a customer transfers tokens or money onto the platform to fund their account,

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24   See Info Box 1: Comparing structures of token-based and account-based marketplaces.

25   For examples of how ASIC applies rules to asset holders, see ASIC RG 133 Funds management and services: Holding assets

26   Sometimes these 'rights' have true 'custody' characteristics (e.g. trust or bailment agreements). Sometimes these rights might be financial products in themselves (e.g. units in a managed investment scheme, or deposit-like facilities). In many cases, in the digital asset space, these rights are simply a debt claim against the platform provider. For an outline of asset holding arrangements in the digital asset ecosystem, see Clifford Chance, Custody of Cryptoassets: Moving toward best practice, 15 June 2023).

- platform entitlements are *exercised* by a customer when the platform transfers tokens or money off the platform on the customer's request (i.e. a withdrawal from the platform), and

- platform entitlements are *transferrable* instruments (i.e. capable of being exchanged, encumbered, etc).

The proposed framework will specifically cover arrangements for:

- the kinds of token marketplaces described in Box 1 (e.g. holding <u>tokens,</u> issuing platform entitlements in relation to those tokens, and recording the platform entitlements in an <u>account-based system</u>). In these arrangements, the platform intermediates the exercise of platform entitlements for *account holders*.

- asset-backed tokens and other 'wrapped' assets (e.g. holding <u>any assets</u> (*including tokens*), issuing platform entitlements in relation to those assets, and recording the platform entitlements using a <u>token-based system</u>). In these arrangements, the platform intermediates the exercise of platform entitlements for *token holders*.

There are no differences in the regulatory models required to mitigate the risks involved in 'holding assets' and 'intermediating the exercise of platform entitlements' across the two types of arrangements. Accordingly, they would each be covered as part of a unified framework that addresses the common risks.[27] Any transactional functions built into the asset holding arrangement would be regulated either: (i) by the financial services laws (if the underlying assets are financial products); or (ii) by a new regime for 'financialised functions' (if the underlying assets are not financial products).

Comparison between two primary types of in-scope digital asset platforms

	Type 1	Type 2
platform holds	tokens	any assets (including tokens)
platform issues	entitlements to tokens	entitlements to assets
system of record	account-based system	token-based system
entitlements accrue to	account holder	token holder

Identifying holders of digital assets

In some cases, it can be difficult to determine whether a person is 'holding' a digital asset. They may be stored in ways that permit multiple parties to access them, programmed to be accessible when certain conditions are met, or subject to other forms of technical encumbrance. The proposed framework would leverage broad concepts around 'control' to identify the holding arrangements to bring within the regulatory perimeter. For example, businesses with the ability to exercise, coordinate, or direct 'factual control' over the assets in a real and immediate sense.[28]

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27   The primary difference in dealing in platform entitlements between the two models is that they accrue to an account holder in one and a token holder in the other. There are no real differences in obligations needed to address the asset holding arrangements.

28   This formulation was proposed to define a 'holding intermediary' by the UK Law Commission (see Digital Assets: Final Report, Chapters 7). It is broadly similar to the concepts used by Financial Action Task Force

Creating or selling software used by others to hold or deal in assets (**custody software**) would not be an asset holding arrangement. However, a business with the necessary level of control of digital assets (whether using custody software or not) would be in scope. This approach is expected to provide an avenue for enforcement action against significant numbers of frauds and scams, many of which label themselves 'decentralised finance' but retain (and exercise) the ability to steal customer tokens.

The broad approach is intended to be technology agnostic. It aims to capture the risks consumers are exposed to when relying on any third party to hold assets. However, the broad approach would not block the path to regulatory compliance for asset holders that use specific types of technology as part of their product. The obligations would be designed such that it would be possible (and required) for a business that controls customer tokens using custody software, such as smart contracts, to comply with the same requirements as any other business.

2.3 Overview of proposed framework

Licensing

The proposed framework would recognise certain asset holding arrangements as a financial product (a digital asset facility). The existing AFSL framework would apply to any person 'carrying on a financial services business in Australia' in relation to a digital asset facility. Examples of 'financial services' include:

- dealing in a financial product (including applying for or acquiring, issuing, varying or disposing of a financial product)

- making a market for a financial product

- providing a custodial or depository service, and

- providing financial product advice.

The issuer of a digital asset facility would be the person or persons responsible for the obligations owed to customers under the terms of the asset holding arrangement (**platform provider**). Platform providers and other intermediaries performing financial services in relation to digital asset facilities (e.g. brokers, arrangers, agents, market makers, and advisers) would be required to hold an AFSL.

While the application of the AFSL regime would be jurisdictionally limited to Australia in the usual way, an intermediary business in Australia, like a broker, would need to be licensed to provide services that involve dealing in digital asset facilities generally (including those not licensed or located in Australia).

See **Part 3** for further detail about licensing obligations.

Facility contracts

The proposed framework would permit digital asset facilities to be paired with multilateral functions, creating digital asset platforms. All arrangements involving digital asset facilities would be required to

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(**FATF**) to describe safekeeping arrangements (e.g. 'persons that operate, maintain control over, or have significant influence over [tokens]') (see Financial Action Task Force, Virtual Asset and Virtual Asset Service Providers, Updated guidance for a risk-based approach, October 2021 (FATF updated guidance)), paras 67 and 82 ff).

be structured as non-discretionary arrangements.[29] The term 'non-discretionary' means the arrangements must operate according to pre-agreed and transparent rules and procedures.

The non-discretionary arrangements would need to be disclosed and agreed in a written agreement between platform provider and customers (**facility contract**). A facility contract would need to meet:

- minimum standards for holding assets

- minimum standards for intermediating platform entitlements

- minimum standards for transactional functions

Minimum standards for holding assets

Digital asset facilities would be required to meet minimum standards that largely replicate the minimum standards that apply to financial products and services that hold assets.[30] This includes the requirement to hold financial products on trust. The minimum standards for holding assets would be tailored to include 'additional standards for holding tokens'. In addition, the minimum standards would permit additional types of 'true' custody arrangements for non-financial products, such as bailment.[31] This tailoring means digital asset facilities would be able to safely hold any type of asset. The minimum standards for holding assets will apply to all digital asset facilities, including 'custody only arrangements'.

Minimum standards for intermediating platform entitlements

The minimum standards for intermediating platform entitlements would permit a facility contract to include arrangements for:

- issuing transferrable platform entitlements

- maintaining records of platform entitlements using either:

  – an account-based system (for recording entitlements to tokens); or

  – a token-based system (for recording entitlements to any assets); and

- facilitating transactions in relation to platform entitlements.

The minimum standards would *not* permit the platform to issue complex platform entitlements. The platform entitlements would be simple entitlements that a holder can exercise for the delivery or transfer of assets off platform. They would need to reflect the token holders or account holders' ownership or beneficial ownership of the underlying assets. The relevant tokens (**platform tokens**) or accounts would perform the registry or 'proof of ownership' function for the digital asset facility. The

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29   Non-discretionary transactional facilities have been enabled in response to technology developments in other jurisdictions. For example, the EU has enabled the concept of a 'multilateral trading facility' and the US has enabled a similar concept of an 'alternative trading system' (see N Moloney, E Ferran, and J Payne (eds), *The Oxford Handbook of Financial Regulation*, Oxford Academic, 12 Nov. 2015, page 575).

30   For an overview of how ASIC interprets the obligations on existing asset holders, see ASIC RG 133 Funds management and services: Holding assets, and RG-179: MDA, Tables 5 and 6).

31   Bailment is a type of custody where the owner of property (bailor) transfers possession of the property to another person (bailee) but does not transfer legal title. It is commonly used in physical token-based systems, such as depositing a jacket in a 'cloak room' at a theatre or a vehicle into a valet service. In these cases, a paper token provides its holder with an entitlement to delivery of the property. Bailment is also used for digital assets in Australia (see '*The Gold and Silver Standard*', https://goldsilverstandard.com/). It only applies to tangible property. Bailment is bankruptcy remote.

precise legal nature of the arrangement would depend on the custody arrangements that are used and/or permissible for a particular asset.

The limitation on the types of platform entitlements that can be issued ensures the framework acts to overlay rather than displace or conflict with existing regulatory frameworks. It does not limit the complexity of assets that can be held by digital asset facilities. For example, while a platform provider would not be able to issue a platform entitlement that meets the definition of a security, it would be able to hold an existing security and issue platform entitlements in relation to it.[32]

Minimum standards for transactional functions

The minimum standards for transactional functions would permit a facility contract to include arrangements for 'transactional functions'. These transactional functions must comply with:

- the existing financial services laws (where a platform entitlement relates to a financial product), or

- the minimum standards for 'financialised functions' (where a platform entitlement does not relate to a financial product).

In respect of **financial products** (including tokens recording entitlements that are financial products), the proposed framework simply acts to mitigate the unique risks that arise when holding tokens and issuing entitlements recorded in token-based systems. It does not change existing obligations. In all cases, the existing financial services laws will apply to any transaction involving a financial product. This includes the requirement to be licensed and authorised. Existing frameworks, such as the Australian markets licence framework, apply to financial products regardless of their system of record.

*See **Part 4** for further detail about the minimum standards for facility contracts.*

Financialised functions

Transactions involving assets that are not financial products are not typically subject to the financial services laws. An important feature of the proposed framework would be that platform entitlements in relation to non-financial product assets do not *become* financial products. For example, a producer of non-financial products (e.g. fine wine or collectables) could engage a digital asset platform to hold those assets and issue platform entitlements recorded using a token-based system (i.e. create asset-backed digital assets). However, those digital assets themselves would not be financial products. In this way, the future token holders and the original producer are protected by the financial services laws, but there will be minimal impact on how the producer can distribute the *digital* versions of their non-financial products.[33]

However, the ease in which any digital asset can be 'financialised' requires a commensurate regulatory response. Accordingly, certain transactional functions performed by digital asset platforms in respect

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32   This could involve creating a tokenised version of the asset (i.e. issuing an entitlement recorded in a token system). Alternatively, if the asset held was already tokenised, it could involve holding or facilitating transactions in relation to that asset (i.e. issuing an entitlement recorded in an account-based system). In all cases, the platform provider would need to comply with the existing financial services laws that apply to activities in relation to that kind of asset, including the requirement to be licensed and authorised.

33   This replicates the status quo but for introducing regulation for the asset holder. An arrangement for a non-financial product to be held on trust or through a bailment arrangement is not a financial product. Accordingly, a platform entitlement in relation to a non-financial product will not be a financial product.

of 'digital assets that are not financial products' would need to meet additional minimum standards. These functions (**financialised functions**) would include:

- intermediating the exchange of platform entitlements between account holders (**token trading**).

- intermediating an account holder's participation in validating transactions on a public network (**token staking**).

- intermediating the creation and exchange of platform entitlements backed by tangible and intangible non-financial product assets (**asset tokenisation**).

- intermediating the sale of platform entitlements to fund the development of non-financial products and services (**funding tokenisation**).

The issuer of a digital asset facility embedded with financialised functions would not require separate AFSL authorisations. However, with few exceptions, a single facility would not be able to perform more than one of the financialised functions.[34] For asset tokenisation, a new facility would need to be issued for creating a new type of token. For crowdfunding tokenisation, a new facility would need to be issued for each project seeking funding.

Transactional activities that involve an asset holding arrangement but that are not 'financialised functions' would not be subject to additional requirements. However, the asset holding arrangement (digital asset facility) would still be a financial product. For example, gaming is subject to its own regulatory frameworks and would not be a regulated activity under the proposed framework. If that gaming business holds significant values of tokens on behalf of customers, the asset holding arrangement would be considered a 'digital asset facility'. The business could seek an AFSL and authorisation to issue and deal in a digital asset facility, or it could engage a platform provider as principal to perform the holding function. There would be a mechanism in place to ensure the business is not taken to be providing a financial service through this arrangement.

*See **Part 5** for further detail about the minimum standards for the financialised functions.*

Reliance on existing regulatory frameworks

In Australia, products and services are regulated by a variety of legal frameworks, both state and federal. Each framework exists for a different purpose and is administered by bodies equipped with tools and expertise to fulfil that purpose. Entitlements to products and services recorded in token-based systems are not excluded from these frameworks. In some cases, existing frameworks are already familiar with token-based systems (e.g. ticketing, digital identity, memberships, and gift certificates).

Digital assets are not a homogenous asset class. They are used across industries and sectors for a growing variety of financial and non-financial purposes. The proposed framework for regulating digital assets does not displace these specialised frameworks. This could cause overlapping regulation, potential conflicts in regulatory responsibilities, and lead to poor consumer outcomes. Rather, the proposed framework would supplement existing frameworks only where there are risks that are best addressed by applying the financial services laws.

Set out below are examples of activities that are not addressed directly by the proposed framework. In each case, there is an existing regulatory framework that applies to the activity, regardless of whether

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34   A limited amount of administrative token trading would be permitted to be paired with any of the functions. This is because almost all transactions involving token-based systems involves an exchange of tokens (in a similar way to how almost all transactions involving account-based systems involves updates to accounts).

it involves tokens or accounts. However, the proposed framework may still be engaged to supplement the existing regulatory frameworks, (e.g. if the activity involved an asset holding arrangements that was made for the purpose of fundraising, or involved the service provider dealing in digital asset facilities).

- **Issuing (primary sales of) entitlements that are not financial products**. This activity is subject to existing state and federal regulatory frameworks. For example, a person using tokens to record an entitlement to money that is conditional on the outcome of a sports match (e.g. gambling provider) would have to meet the existing requirements that apply to a person performing that activity.

- **Secondary sales (merchant sales) of entitlements that are not financial products**. This activity is subject to existing state and federal regulatory frameworks that apply to merchants. For example, a person reselling tokens that record entitlements to enter an event (e.g. ticket reseller) would have to meet any state and federal requirements and prohibitions on ticket reselling.

- **Issuing entitlements that are financial products**. This activity is a type of 'dealing', which is a financial service and subject to the existing financial services framework. This would include 'native tokenisation' (e.g. issuing an entitlement that is a financial product and agreeing or declaring that it accrues to the holder of a particular token).[35] The issuer of that entitlement would be subject to the same obligations as an issuer of the same entitlement recorded using other methods.

- **Providing other financial services in relation to entitlements that are financial products**. These activities are subject to the existing financial services laws. A person that performs a financial service in relation to an entitlement that is a financial product is subject to a set of obligations that do not differ between systems of record. Other rules and legislation that may apply to these activities include:

  (i) the Australian Securities Exchange (ASX) Operating Rules and ASX 24 (formerly Sydney Futures Exchange (SFE)) Operating Rules

  (ii) the ASIC market integrity rules

  (iii) laws relating to foreign investment in Australia

  (iv) laws relating to banking and insurance

  (v) laws relating to credit activities, and

  (vi) laws relating to payment systems and the transfer of funds.

- **Providing a *service* for merchants to accept tokens as payment**. This activity is already regulated as a non-cash payment facility (a financial product) under the existing financial services framework.

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35   Native tokenisation is distinct from the type of 'custodial tokenisation' addressed by the proposed framework. For example, the proposed framework would apply where a bond (issued by a company in a conventional manner) was held by a digital asset facility that issued platform entitlements that could be exercise by holders of a particular token. Most tokenisation activity has tended toward this custodial model because it allows the structure of a product to be created under conventional frameworks, with the 'tokenisation' occurring in a simpler manner (For information on tokenisation structures, see F Carapella et al, Tokenization: Overview and Financial Stability Implications, Finance and Economics Discussion Series 2023-060. Board of Governors of the Federal Reserve).

- **Providing a payment stablecoin**. This activity would be covered by the 'stored value facility' framework and will be exempt from proposals outlined in this paper.[36]

- **Accepting tokens as payment for goods and services**. This activity would continue to be subject to existing contract law principles, which permit parties to agree methods of payment. If the payments are facilitated through a non-cash payment facility, the rules that apply to that activity would apply.

- **Publishing data to a public database**. This activity, which could include publishing artwork, messages, software, and other types of information, would continue to be subject to existing legal and regulatory frameworks. For example:

    (i)   intellectual property laws,

    (ii) privacy laws,

    (iii) media and communications laws,

    (iv) defamation laws, and

    (v)   any other laws that apply to information regardless of the medium on which it is published.

2.4 Focus of the proposed framework

The proposed framework focuses on preserving the existing regulatory boundaries between financial products and other products. Its objective is to ensure a balanced approach to risk mitigation, consumer protection and innovation. Platform providers would be required to meet the high standards of financial service providers whether their services involve entitlements that are financial products or not.

Technology agnostic

The proposed framework does not displace the existing financial services laws. This means it will still be necessary to distinguish between entitlements and arrangements that are financial products and those that are not. It will be important for regulatory clarity that existing financial product definitions are assessed and applied in an entirely technology-neutral manner. That is, the 'financial product' status for a specific arrangement should be the same whether it involves entitlements recorded using a *digital* token-based system, a physical token-based system, an account-based system, or no system of record at all.

In the case of digital asset facilities holding or dealing in financial products, the proposed framework is focused on being complementary to the existing financial services laws. It provides for a new facility for existing assets to be held or tokenised safely, within the bounds of the existing rules. In the case of digital asset facilities holding or dealing in other products, the proposed framework is focused on addressing the risks and harms of financialisation which have arisen *because* of the difference between token-based systems and account-based systems. In addition to providing a platform for holding and

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36   Broadly, a payment stablecoin is a proprietary payment network that uses a token-based system in place of an account-based system. Operators of conventional proprietary payment networks and operators of payment stablecoin systems issue entitlements that can be exchanged for private bank money. The primary difference being that payment stablecoins are bearer assets (i.e. the entitlement accrues to a person in 'factual control' of a token). Accordingly, an operator of a payment stablecoin does not manage accounts for all users of the system (that function is delegated to tokens and token holders themselves, as is the case with any token-based system). For an outline of the proposed stored value facility framework, see Commonwealth Treasury, Payments System Modernisation (Licensing: Defining Payment Functions.

tokenising non-financial assets safely, it proposes to introduce reasonable guardrails around these financialised activities.

Addressing financialisation of non-financial products

The new framework for financialised activities is focused on ensuring that consumers are protected when interacting with service providers performing these activities. It aims to apply the full protections of the financial services laws to the riskiest parts of a digital asset business. However, it is also cognisant of the economic harms and commercial disadvantages that could arise from overextending the financial service laws to non-financial products. An important outcome of regulatory frameworks is ensuring that potential benefits of new technology are made safely available to all Australians.

Regulatory clarity

The financialised functions regime would be engaged when a platform provider deals in digital assets that are not financial products. This may apply to investments in tokenised 'real-world assets', such as gold or collectibles (depending on the arrangements used to tokenise those assets), investments in digitally native *assets*, such as bitcoin and ether, and digitally native *investments*, such as participating in some forms of staking. For example, tokens that would be expected to fall into the financialised functions regime, and therefore be available through platforms complying with the requirements for the 'token trading' function, include:[37]

- tokens that attest to membership of a group or support of a cause.

- tokens that can be redeemed for a non-financial service.

- tokens that represent a right to access a physical location or event.

- tokens used to balance the supply and demand of a finite resource, such as data storage or computational capacity.

- tokens that provide no entitlements but for 'factual control' or that have no counterparties.

- tokens that can be redeemed for tangible goods.

However, the existing securities and financial fundraising regime will continue to apply to issuers of financial products. The proposed framework will not change or reduce the liability of a person for how tokens are sold or distributed. The sale of entitlements to products and services (whether recorded in a token-based system or otherwise) may be part of an arrangement that meets the definition of a financial product. This may be so even where the token itself does not provide an entitlement typically associated with a financial product.[38]

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37 To the extent that they do not also act as records of entitlements that are a financial product.

38 Arrangements that involve various types of entitlements recorded through different systems are not uncommon in traditional finance. For example, the sales of shares by companies operating supermarkets and cinemas have historically been accompanied by a promise of benefits in the form of vouchers for products and services. In these cases, the overall arrangement is still a securities offering, even though the tokens (discount vouchers) would presumably not be securities. In the digital asset space, it may be more difficult to assess because the overall arrangement may not neatly be split between two separate systems of record. The entitlement that is a security may not be recorded in a system of record at all. It may just be a simple agreement for the sale of tokens.

The proposed framework also addresses stakeholder concerns around non-financial fundraising. These concerns have included regulatory uncertainty and the risk of harmful alternative fundraising models.[39] It does so by introducing a financialised function for tokenised (non-financial) crowdsource funding. The focus of this activity is combatting harmful fundraising practices while supporting legitimate Australian entrepreneurs and not-for-profits.

Info Box 2   Maintaining the distinction between investments and financial investments

Financial investments and non-financial investments are distinguished by their inherent characteristics and risk profiles, particularly in terms of their impact on consumer protection. Financial investments, such as securities and derivatives, operate within a complex network of contractual obligations, creating multiple layers of embedded risks. Their value is influenced not only by the explicit terms of an arrangement but also by these risks and the potential consequences of unfulfilled promises. Because they play an integral role in the financial system, financial investments present information asymmetries that can distort markets and jeopardise the interests of all investors. Regulation in this area is essential to mitigate these discrepancies and ensure a robust economy for all Australians.

In contrast, non-financial investments such as those made in real estate, gold, baseball cards, art, and domain names derive their value primarily from intrinsic attributes and the prevailing balance of market demand and supply. The value of these assets may be influenced by subjective perceptions, shifting cultural sentiments, or emotional connections. Additionally, the utility or necessity of these same products for non-investment purposes can differ among users and mean that products themselves may be continually developed or evolve naturally over time. Consequently, information asymmetry might be inherent, either by design or circumstance.

Although these assets can expose consumers to individual risks based on market volatility, they lack the complex contractual interdependencies associated with financial investments. As a result, the threats they might pose to consumer well-being and broader market stability is generally more limited. For these reasons, the Corporations Act may not be the best vehicle for regulating creators and developers of non-financial products.

Both classes of investments have their unique roles in the economic landscape, and their distinct regulatory treatments are pivotal in tailoring consumer protection measures effectively. Upholding the distinction between financial products and other products is vital to maintaining regulatory clarity and supporting innovation. While the evolving landscape of digital assets may present new challenges, overextending financial regulations to non-financial products could inadvertently stifle growth in emerging sectors and deter the integration of digital technology into various non-financial industries.

However, this does not apply to the 'financialisation' of non-financial products. Where digital asset platforms are embedded with activities and risks that mirror those of existing financial services, consumers expect and deserve the appropriate level of protection. The proposed framework aims to provide these protections, without impacting the creation and development of innovative non-financial products and services.

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39   See Info Box 16: The need for a tokenised crowdfunding regime.

Questions (Set 1)

Prior consultation submissions have suggested the Corporations Act should be amended to include a specific 'safe harbour' from the regulatory remit of the financial services laws for networks and tokens that are used for a non-financial purpose by individuals and businesses.

What are the benefits and risks that would be associated with this? What would be the practical outcome of a safe harbour?

3. Licensing digital asset intermediaries

This part (Part 3) provides additional detail about 'licensing' (see overview in Part 2.3). It serves as a list of high-level obligations for stakeholder feedback. The obligations are derived from existing provisions but have been simplified for the purpose of this proposal paper. It is not exposure draft legislation. It aims to provide an outline of key obligations, organised to illustrate how the proposed framework could function. Stakeholders are invited to provide feedback, referencing the section and paragraph numbers used in this part (e.g., 3.1(a)). The blue boxes contain focus or 'prompt' questions to assist in providing feedback on certain proposed obligations.

3.1 Standard AFSL Obligations

Australian financial services licence

(a)   A platform provider must hold an AFSL authorising them to issue and deal in digital asset facilities.

(b)   A platform provider is *exempt* from holding an AFSL for digital asset facilities if:

   (i)   the total value of platform entitlements held by any one client of the platform provider does not exceed $1,500 at any one time; and

   (ii)   the total amount of assets held by the platform provider does not exceed $5 million at any time.

Info Box 3   Low value exemption

The risks with digital asset facilities are correlated to the size and scale of the asset holding role of the platform provider. Accordingly, a 'low-value facility' exemption would be introduced, similar to the 'low value facility' exemption for non-cash payment facilities. It would apply to digital asset facilities holding less than $1,500 per customer and less than $5 million in total.[40] This exemption is intended to allow for innovation and experimentation in the early stages of developing a novel service offering.

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[40]   The 'low value facility' exemption for non-cash payment facilities is $10 million and $1,000 per customer (where the facility is not part of another financial product).

(c)   A digital asset facility may have more than one platform provider, each of which takes responsibility for a part of the facility.

Info Box 4   Multiple platform providers

This provision would serve two purposes. First, it means a 'financialised function' cannot be facilitated by an unregulated provider. A person who performs a financialised function and delegates the asset holding role to a third party would be taken to be providing a single digital asset facility with that third party asset holder.[41]

Secondly, it is intended to make it possible for a single digital asset platform to intentionally be constructed from multiple components operated by different entities, which is a common occurrence in token marketplaces. This is sometimes referred to as 'composability'.

Brokers and other dealers

(d)   A person who deals in, or arranges for another person to use, a digital asset facility (whether that facility is in Australia or elsewhere) would need to hold an AFSL authorising them to provide that service.

(e)   A person who deals in, or arranges for another person to use, a digital asset facility in the ordinary course of a business **that is not primarily a financial services business**, does not need to hold an AFSL if:

(i)   they are dealing in a digital asset facility provided by a licensed platform provider; and

(ii)   the dealing does not involve digital assets that are financial products.[42]

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41   This does not mean they *must* both be taken to be the providers. This provision would be supported by an ability to split of responsibilities and liabilities between platform providers, using the same mechanism that exists for IDPSs.

42   This broadly replicates the exemption that applies to business use of non-cash payment facilities (see ASIC RG 36: Licensing: Financial product advice and dealing at RG36.75).

Info Box 5   Non-financial business use

The framework would apply the existing regulation around 'dealing' and 'arranging' such that brokers and agents who make acquisitions through digital asset facilities would be subject to the same regulation as brokers and agents dealing in any financial products.

The exemption is a proposed mechanism for retaining the existing regulatory perimeter, without impacting existing consumer protections. It would facilitate a lawful connection between regulated digital asset facilities and non-financial businesses that are regulated according to existing frameworks.

For example, some video game companies create tokens to record in-game entitlements. These companies would be able to use a regulated digital asset platform (via an API or other electronic means of access) to continue to facilitate the ability for players to trade digital assets using its own infrastructure (e.g. its own website, payment mechanisms, etc). This would provide additional safety to its clients, without significant impact on current business models or regulatory frameworks.[43]

Questions (Set 3)

What would be the impact on existing brokers in the market? Does the proposed create additional risk or opportunities for regulatory arbitrage? How could these be mitigated?

General obligations

(f)   A platform provider must comply with the 'general obligations'.[44] The general obligations include:

   (i)   providing the financial service efficiently, honestly, and fairly,

   (ii)   managing conflicts of interest,[45]

   (iii)   complying with any conditions on the AFSL,[46]

   (iv)   complying (and ensuring representatives comply) with the financial services laws,

   (v)   maintaining (and ensuring representatives maintain) adequate competence to provide the financial service covered by the AFSL,

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43   For example, the Consumer Guarantees under the Australian Consumer Law may not apply if the video game company had to become a financial services provider in order to deal in digital assets that are not financial products.

44   ASIC has provided guidance to businesses regarding how they interpret this obligation. See *ASIC RG 104 AFS licensing: Meeting the general obligations*.

45   For information on ASIC's interpretation of this obligation, see *ASIC RG 181 Licensing: Managing conflicts of interest*

46   For information on ASIC's interpretation of this obligation, see *ASIC PF 209 Australian financial services licence conditions*

(vi) having the financial,[47] technological, and human resources to carry out and supervise the financial service covered by the AFSL,

(vii) having a dispute resolution system[48] and compensation arrangements for retail clients for loss or damage suffered due to breaches of obligations, and

(viii) maintaining a risk management system.

Financial requirements

(g) A platform provider must meet:

(i) the standard solvency and positive net asset requirements,[49]

(ii) the standard cash needs requirement, and

(iii) a net tangible assets (**NTA**) requirement for holding cash or cash equivalents and holding liquid assets of at least:

- 0.5 per cent of the value of the facility (if using a sub-custodian digital asset facility that has $5m NTA),[50] or

- $5 million (if performing the custody function).

Info Box 6   Financial requirements

AFSL holders have obligations to meet 'financial requirements'. These requirements are typically tailored for different financial products through ASIC legislative instruments. The NTA obligation is to address the costs of orderly wind-up in the event the provider fails.[51]

A key issue with digital assets is concentration risk (see Info Box 11 Additional Standards for token holders). The proposed financial requirements balance the need to avoid concentration of digital assets among a small number of custodians with the need to ensure robust NTA. It sets the required level of NTA at the greater of $5 million or 0.5% of the value of the assets held by the facility.[52] This arrangement ensures that as a facility expands, and the operational risk exposure of the platform provider grows, the provider will maintain a corresponding level of financial resources.

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47   For an overview of financial requirements for different products and services, see *ASIC RG 166 AFS licensing: Financial requirements*

48   For information on ASIC's interpretation of this obligation, see *ASIC RG 271 Internal dispute resolution*

49   see RG 166.32 to RG 166.34

50   Minimum $50,000. Maximum $5m.

51   NTA requirements are not aimed at preventing licensee failure, but to provide a financial buffer to decrease the risk of a disorderly or non-compliant wind-up.

52   This broadly replicates the NTA for margin lending facilities.

Other relevant obligations

(h)   A platform provider must comply with any obligations that apply generally to the provider of a 'financial service' and any obligations that apply generally to a person issuing or dealing in a 'financial product',[53] including:

   (i)   the requirements to provide information and assistance to ASIC, including adhering to the reportable situations regime,[54]

   (ii)   the requirements to notify and remediate account holders affected by reportable situations,[55]

   (iii)   the requirements to prepare and submit financial records, statements, and audits,[56]

   (iv)   the prohibition on conflicted remuneration,[57]

   (v)   the design and distribution requirements for retail clients,[58]

   (vi)   the prohibition on unconscionable conduct,

   (vii)   the prohibition on hawking financial products,[59] and

   (viii)   the requirements for providing financial product advice.

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53   To the extent those obligations are relevant to 'non-transferrable' financial products.

54   For information on ASIC's interpretation of this obligation, see ASIC RG 145 ASIC's information gathering powers

55   For information on ASIC's interpretation of this obligation, see ASIC RG 78 Breach reporting by AFS licensees and credit licensees

56   For information on ASIC's interpretation of this obligation, see AFSL Lodging annual accounts and audit report using forms FS70 and FS71

57   For example, the rules around shelf-space fees. For information on ASIC's interpretation of this obligation, see ASIC RG 246 Conflicted and other banned remuneration

58   For information on ASIC's interpretation of this obligation, see ASIC RG 274 Product design and distribution obligations. The platform provider would prepare a 'target market determination' (TMD) in relation to the facility contract itself (this would consider the costs and features of the platform, as well as the types of digital assets made available). The platform TMD would be separate from the TMD prepared by issuers of any financial products offered on its platform. The platform provider and any of their distributors would also have to adhere to the distribution obligations.

59   See ASIC RG 169 Hawking and disclosure: Discretionary powers; and ASIC RG 38 The hawking prohibition.

Info Box 7   Financial product advice

Opinions or recommendations intended to influence, or that could reasonably be regarded as intended to influence, a decision about using a digital asset facility would be financial product advice. Giving advice about using a digital asset facility and investing through it – including acquiring, holding and disposing of digital assets (both financial product and non-financial product) through a digital asset platform – raises the same regulatory issues as giving advice about other financial products. This would apply to platform providers themselves and impact the nature of rewards and other promotions on their websites.

Much like the absence of advice regulation over watches, art and other non-financial goods that can be used for speculative investment this regime does not extend to advice over tokens themselves.

Questions (Set 5)

Should a form of the financial advice framework be expanded to digital assets that are not financial products? Is this appropriate? If so, please outline a suggested framework.

3.2 Disclosure obligations

Facility guide

(a)   A platform provider must provide a 'facility guide' to any retail client before providing any services to them directly. The facility guide must be public and contain the following information worded and presented in a clear, concise and effective manner:

   (i)   the name and contact details of the platform providers,

   (ii)   a summary of the significant characteristics or features of the platform,

   (iii) a summary of the rights, terms, conditions and obligations arising under the *facility contract*, and

   (iv)   references and links to the *full disclosure*.

(b)   The facility guide must also meet the requirements of a financial services guide (FSG). For a digital asset facility run by multiple platform providers, each provider can limit its liability for the contents of the document under the FSG liability provisions, so they are not responsible for any part of the facility guide for which another provider has accepted responsibility.[60]

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60   This mirrors the approach with IDPS operators. In this way, multiple platform providers can produce one facility guide that satisfies the FSG requirements, without being responsible for disclosures about other operators, so long as it is clear that the other operators are responsible for those disclosures.

Info Box 8   Facility guide

This approach adopts key parts of the disclosure regime that applies to Investor Directed Portfolio Services (IDPS). There would be no 'product disclosure statement' under this proposal. Disclosure would occur across the facility guide and the facility contract. The key principles underlying this adaptation of the facility guide approach will be for platform providers to give 'structured and comparable' disclosure to clients in the facility guide, which would include full disclosure through links to an online resource. The facility guide would need to include a summary of the key information a retail client needs to know to decide whether to on board to the platform (and how to exercise a platform entitlement, if they are holding a platform token). These streamlined documents must use clear and straightforward language easily comprehensible by retail clients. In this case, the facility guide would be complemented by comprehensive full disclosure on the website.

Full disclosure (incorporated into facility guide by references and links)

(c)   The platform provider must publish to its website all the information a person would reasonably require for the purpose of making a decision, as a retail client, whether to become a client of the platform (**full disclosure**), including:

   (i)   such information that the person would reasonably require to:
   - understand the nature of the facility being offered and the risks associated with participation in the platform,
   - identify the platform providers and custodians and the nature of their responsibilities and relationships,
   - understand any differences between a platform entitlement and holding an asset directly,
   - understand the dispute resolution process, and
   - understand rights to disclosure in relation to assets and tokens the subject of platform entitlements.

   (ii)   the 'facility contract'.

Facility contract

(d)   A platform provider must enter into a standard form facility contract with any user of the platform. The facility contract must meet the minimum standards for holding assets.

(e)   A facility contract that provides for multilateral functions on top of an asset holding arrangement must include:

   (i)   a set of **non-discretionary rules and arrangements** that meet:
   - minimum standards for intermediating platform entitlements
   - minimum standards for transactional functions

   (ii)   a set of **transparent and non-discriminatory criteria** governing:
   - access to the platform
   - fees, commissions, rebates, or benefits paid or received by users and platform providers

- benefits or entitlements that accrue to the platform provider as the holder or beneficial holder of assets (e.g. whether they will be passed through to account holders or token holders).[61]

(f) A platform provider may engage others to provide some or all the administrative services contracted to provide to an account holder.[62]

Info Box 9   Facility contract

This approach of using a facility contract is broadly similar to the onboarding requirements of IDPSs. However, it adopts the enhanced transparency and non-discretionary requirements of the 'rulebook' approach used for non-discretionary trading facilities in other jurisdictions. Under this approach, rules must be built into the system's protocols or operating procedures, which can include procedures embodied in computer software.

Questions (Set 6)

Automated systems are common in token marketplaces. Does this approach to pre-agreed and disclosed rules make it possible for the rules to be encoded in software so automated systems can be compliant?

Should there be an ability for *discretionary* facilities dealing in digital assets to be licensed (using the managed investment scheme framework or similar)?

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61   e.g. income, voting rights, airdrops, or technical control of software (such as the factual ability to interact with a smart contract).

62   This mirrors the approach of IDPSs (see ASIC RG 148: IDPS) and managed discretionary accounts (see ASIC RG 179: Managed discretionary accounts).

4. Minimum standards for facility contracts

This part (Part 4) provides details about the 'facility contract' (see overview in Part 2.3). It serves as a list of high-level obligations for stakeholder feedback. It is structured as a list of requirements to be included as part of the contractual arrangement that creates the digital asset facility, together with additional minimum standards for multilateral functions paired with the facility. It is not exposure draft legislation. Stakeholders are invited to provide feedback, referencing the section and paragraph numbers used in this part (e.g., 4.1(a), 4.1(b)).[63]

4.1 Minimum standards for holding assets

(a)   The facility contract must meet the minimum standards for holding assets, including that:

    (i)   assets must be held for token holders or account holders through an arrangement that meets '*minimum standards for asset holders*' that apply to holders of financial products.[64]

    (ii)   tangible assets may be held on trust or by way of a bailment arrangement.

    (iii)   tokens must be safeguarded according the '***additional standards for token holders***'.

Info Box 10   Minimum standards for asset holders

The 'minimum standards for asset holders' apply to other asset holding facilities (such as managed discretionary account providers). The minimum standards include requirements to have adequate organisation structure, staffing capabilities, and capacity and resources to perform core administrative activities. These standards would apply to holders of financial products and non-financial assets (including digital assets that are financial products and those that are not).

The minimum standards also include a requirement to hold financial products on trust. The proposed framework would permit other forms of 'true' custody for assets that are not financial products, such as 'bailment'.[65] Bailment is only relevant to tangible assets. It would provide the ability for entitlement holders to have direct legal ownership of the assets being held by the platform provider. Bailment is currently widely used in token-based systems (both physical and digital).

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63   The blue boxes contain focus or 'prompt' questions to assist in providing feedback on certain specific obligations.

64   For information on ASIC's interpretation of this obligation, see ASIC RG 133 Funds management and services: Holding assets, and RG-179: MDA, Tables 5 and 6).

65   For a description of bailment, see footnote 31.

Questions (Set 7)

Do you agree with the proposal to adopt the 'minimum standards for asset holders' for digital asset facilities? Do you agree with the proposal to tailor the minimum standards to permit 'bailment' arrangements and require currency to be held in limited types of cash equivalents? What parts (if any) of the minimum standards require further tailoring?

The 'minimum standards for asset holders' would require tokens to be held on trust. Does this break any important security mechanisms or businesses models for existing token holders? What would be held on trust (e.g. the facility, the platform entitlements, the accounts, a physical record of 'private keys', or something else)?

Additional standards for token holders

(b)   Tokens must be held through arrangements that can ensure the tokens are:

    (i)   safeguarded using the highest level of safety that reasonably balances security and the timely processing of requests to exercise platform entitlements.

    (ii)   only held using custody software that is continuously monitored and routinely audited.

    (iii)   only held with the assistance of a 'custody software service provider',[66] if the services agreement requires that service provider to establish and maintain business continuity arrangements that are reasonable for the nature, scale and complexity of its business.

    (iv)   only held by a third party sub-custodian if that third party is a platform provider that meets the minimum standards for asset holders.

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66   A custody software service provider means a provider of services in relation to custody where the service provider both: (a) cannot initiate a transaction without the participation of the platform provider; and (b) cannot prevent the platform provider initiating a transaction. However, it is a 'service' because it involves some type of service agreement with the platform provider (e.g. partial key backup or software updates).

Info Box 11 Additional standards for token holders

The custody of bearer assets, such as digital assets, can bring about distinct risks when compared to the custody of non-bearer assets, such as most existing financial products. In the context of digital assets, the loss of access to tokens (via theft of private keys, loss of private keys, transaction errors, or damage to the systems storing private keys) can mean the irreversible loss of the entitlements linked to the tokens.[67]

To address these risks, various technological solutions have been introduced that balance security and accessibility. 'Cold wallets' are offline records of private keys, ensuring heightened security. In contrast, 'hot wallets' store private keys on internet-connected devices, favouring speedy access over security. The need for balance has also given rise to 'warm wallets', smart contract wallets, and cryptographic innovations like 'multi-party computation' (MPC) technology.

There is also significant concentration risk that arises with the safeguarding of tokens. Systems for safeguarding tokens are attractive targets to malicious actors. A physical or cyber intrusion can result in a person gaining access to private keys, which could be used to dispose of the tokens on any trading platform globally. This has impacts for the safety of custodial staff and the need for some safeguarding processes to remain strictly confidential. Other harms can also flow from this concentration risk. For example, where a single platform becomes the dominant custodian of a single digital asset or type of entitlement, the theft and subsequent fire sale of those assets could significantly destabilise the market.

Considering the potential consequences of these risks, the establishment of regulatory obligations becomes essential. These obligations must provide the flexibility for service providers to ensure the safety of custodial staff, adapt to emerging technical challenges, and mitigate new methods of exploitation. However, the overarching objective of the minimum standards should be to ensure the security of customer assets and ensure platform entitlements survive in the event of the insolvency of the platform provider.

Questions (Set 8)

Do you agree with proposed additional standards for token holders? What should be included or removed?

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67   Importantly, the loss of access to tokens (including through theft or damage) does not necessarily mean the loss of access to its entitlements. In some cases, such as verifiable permanent loss of access to tokens, the issuer of the entitlements could simply reissue the entitlements linked to new tokens (and refuse to recognise the old tokens). However, this may not be possible nor fair in all cases (e.g. where stolen tokens are quickly sold).

4.2 Minimum standards for intermediating platform entitlements

(a) In relation to the **issuance of platform entitlements**, the facility contract must meet the minimum standards, including that:

    (i) a platform entitlement must be created to represent each asset held by the platform (or each unit of an asset, if it is fungible)

    (ii) platform entitlements may be recorded using an account-based system or a token-based system.

(b) In relation to the **exercise of platform entitlements**, the facility contract must meet the minimum standards, including that:

    (i) a person with a platform entitlement has sole discretion to decide on and provide instructions in relation to exercising their platform entitlement.

    (ii) instructions to exercise platform entitlements must be processed by the platform provider in a timely manner.

    (iii) a platform entitlement can only be exercised once.

4.3 Minimum standards for transactional functions

(a) The facility contract must meet the minimum standards for transactional functions, including that:

    (i) subject to the financial services laws and any of the relevant 'financialised functions', account holders or token holders have sole discretion to decide on and provide instructions on transactions in relation to platform entitlements, including:[68]

- the disposal of their platform entitlements[69]
- the transfer of their platform entitlements
- the exchange of their platform entitlements
- the encumbrance of their platform entitlements; and
- the use of any assets underlying their platform entitlements.[70]

    (ii) the platform provider will have and apply '**listing criteria**' for any product made available for transactional functions on its platform.

    (iii) acquisitions of digital assets via a transactional function will only occur if the '**token disclosure**' has been made.

    (iv) the platform provider will notify ASIC in writing if it has reasonable grounds to suspect that a person has engaged in market misconduct, or, for digital assets that are not financial

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68   Digital asset platforms that hold assets and issue platform entitlements recorded in tokens (e.g. asset tokenisation) would typically meet the first four of these requirements with a standard form token (e.g. ERC-20).

69   Standing instructions where the platform provider does not exercise any discretion would not breach the non-discretionary requirements (e.g. in the case of realising assets to take a percent for a transaction fee).

70   For example, a platform provider cannot exercise an entitlement like 'voting rights' that accrues to it as holder or beneficial holder of an asset, unless the relevant account holder or platform holders have approved it. This would apply also the rehypothecation and activities like 'staking' for tokens.

products, conduct that would be market misconduct had the digital assets been financial products.

(v)   the platform provider will make reasonable efforts to identify, prevent, and disrupt market misconduct (or, for digital assets that are not financial products, conduct that would be market misconduct had the digital assets been financial products) on its platform.

Info Box 12 Combatting market misconduct in the token ecosystem

Market misconduct includes market manipulation, false trading and market rigging, wash sales, and fictitious transactions. Market misconduct is similar between financial markets (e.g. equities markets) and non-financial markets. (e.g. spot commodity markets). However, there are unique aspects of token marketplaces that mean unique market surveillance and enforcement mechanisms are necessary. One of these aspects is the global mesh of distributed networks that forms the foundational layer to any digital asset business. Reliance on this global network infrastructure means each platform is inherently connected to each other platform globally.

This interconnectedness of digital asset businesses provides a level of transparency that is unprecedented in financial markets.[71] However, from the perspective of a network observer, token holding intermediaries, such as trading platforms, are dark pools or 'off-book'. By mandating reasonably efforts to identify, prevent, and disrupt market misconduct for all digital asset platforms (rather than just trading platforms), platform providers can work together (with regulators and data analytics firms) to get an almost complete picture of transactions occurring in the token ecosystem.

A complete picture of the token ecosystem is needed because digital assets present unique challenges in identifying market misconduct. Challenges are magnified by the significant presence of direct retail participants, the existence of tokens designed with varying purposes and utility, the international and borderless operations of intermediaries, and a multitude of global price determination points. Combatting market misconduct will require flexible strategies. The methods used to identify market abuse should be determined after a thorough risk assessment specific to each platform.

Market manipulation in particular poses considerable risks to consumers and the overall integrity of the digital asset ecosystem. Market manipulation can occur even where the token is designed to have varying levels of information asymmetry (such as trading cards or certain tangible goods). In non-financial markets (including token-based markets), manipulative behaviours can be diverse, may or may not entail criminal conduct, and could emanate from multiple sources. For instance, a customer, or a group acting in concert, might influence a token's price across multiple platforms globally.

Due to these challenges, market misconduct in digital assets that are not financial products will likely remain more elevated than in Australian financial markets in the near term. Consumers should be made aware of this risk. Ongoing international coordination on regulatory settings for a greater part of the ecosystem may help in the future.[72]

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71   Schär, Fabian, Decentralized Finance: On Blockchain- and Smart Contract-based Financial Markets (March 8, 2020).

72   In the same regard as HM Treasury UK convey in the paper on 'Future of Financial Services: Crypto Assets'.

Listing criteria

(b)   The listing criteria must be a document outlining the systems, policies and procedures for making tokens available through the platform.

(c)   The listing criteria must require that, for any asset made available for acquisition through a digital asset facility, there is access to sufficient publicly available information to enable its account holders to make a purchasing decision.

(d)   the platform provider makes available a summary of the public information that was assessed against its listing criteria, presented in a clear, concise, and effective manner.

Token disclosures

(e)   The facility contract must require that, for each **financial product** made available for acquisition through the platform, the platform provider only facilitate an acquisition on behalf of an account holder, if the platform provider reasonably believes that the account holder has been given a copy of the disclosure document for that financial product that would have been required had the financial product been offered to the account holder directly.

(f)   The facility contract must require that, for each **non-financial product** made available for acquisition through the platform, the platform provider:

   (i)   makes available a copy of the document recording the rights and obligations of the issuer and token holder (e.g. terms and conditions, user agreement, deed or other binding contract prepared by the issuer of the entitlement)

   (ii)   displays a clear, prominent and truthful statement that the acquisition of the entitlement is not a financial investment, does not provide the holder with equity in a business, and that the token was not distributed along with a promise of a financial return or financial benefit.

(g)   The facility contract must require that for each '**token attaching no entitlements except 'factual control**' made available for acquisition through the platform, the platform provider:

   (i)   obtains express confirmation that an account holder seeking to acquire the token has read the summary of public information that was assessed against the listing criteria, including the purpose and utility of the tokens

   (ii)   makes available (on request) technical information about the operation of any application in which the token is a component, including software audits

   (iii)   displays a clear, prominent, and truthful statement that the acquisition of the entitlement is not a financial investment, does not provide the holder with equity in a business, and that

the token was not distributed along with any promise of a financial return or financial benefit.

(h)   The facility contract must not exclude the platform provider's liability for misstatements in the information made available in relation to tokens attaching no entitlements.[73]

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73   This could be designed to replicate the approach to 'white papers' under the EU's 'Markets in Crypto Assets' framework.

5. Minimum standards for 'financialised functions'

This part (Part 5) provides details about the 'financialised functions' (see overview in Part 2.3). It outlines the intended policy goals and regulatory outcomes for the four 'financialised functions.' The paragraphs in this section are a list of possible minimum standards for the financialised functions. Stakeholders are invited to provide views on the proposed standards and to identify suitable existing frameworks or provisions that could be tailored to meet the goals and outcomes.

Multiple 'financialised functions' would not be able to be incorporated into the same facility. A multi-service platform provider would need to issue more than one facility to provide more than one of the financialised functions. The segregated facilities would require separate platform guides to be provided to clients when that opt into that function.

These 'financialised functions' are relevant only to transactions that do not involve financial products. They should be read as including the requirements and obligations outlined in Parts 3 and 4.

5.1 Token trading

Token trading – intermediating the exchange of platform entitlements between account holders.

Policy goals and regulatory outcomes

A framework for the regulation of token trading that:

(a)   provides flexibility to accommodate (and leverage any potential benefits of) token marketplaces

(b)   provides a framework that is commensurate with the non-financial nature of the entitlements being traded

(c)   accommodates a competitive ecosystem of conventional and digital asset native technologies, including:

(1)   order book trading systems; [74]

(2)   quote-driven trading systems;[75]

(3)   request for quote trading systems; and [76]

(4)   constant product trading systems.[77]

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[74]   A system that uses an order book and an automated matching engine to match sell orders with buy orders on the basis of the best available price on a continuous basis.

[75]   A system where transactions are concluded on the basis of firm quotes that are continuously made available to account holders.

[76]   A system where a quote or quotes are provided in response to a request for quote submitted by account holders. The quote is executable exclusively by the requesting member or participant.

[77]   A system that uses liquidity pools and balancing algorithms to provide continuous liquidity at all price points (see Foley, Sean and O'Neill, Peter and Putnins, Talis J., A Better Market Design? Applying 'Automated Market Makers' to Traditional Financial Markets (June 15, 2023)).

Proposed approach

A digital asset platform with a token trading function must:

(d)   have and apply policies and procedures that implement:

   (i)   objective criteria for assessing networks supported by the system, including availability (such as uptime), data integrity, neutrality, and potential conflicts of interest among network operators.

   (ii)   measures for dealing with network congestion, transaction fee spikes, and other issues impacting the timely redemption of platform entitlements.

   (iii)   measures for evaluating the security of bridges and other technical factors that could impact the timely exercise of platform entitlements.

   (iv)   measures for mitigating the impact of critical network events like forks, rollbacks, and reorgs, such as operating nodes and maintaining internal copies of public databases.

   (v)   Measures for recovering tokens sent by account holders to the platform provider's correct address on the wrong network, where technically possible, and other user error risks.

(e)   have and apply protocols, procedures, and criteria for:

   (i)   the efficient execution of account holder instructions.

   (ii)   the delisting of digital assets (e.g. liquidity thresholds).

   (iii)   engaging market makers or liquidity providers.

   (iv)   setting the conditions under which trading of digital assets can be suspended.

   (v)   filtering of instructions to ensure system efficiency and integrity.

   (vi)   transparent fee structures that discourage disorderly trading or market abuse.

(f)   make public the bid and offer price ranges, as well as the depth of trading interest at those prices (pre-trade transparency).

(g)   make public the prices, volumes, and time of executed transactions on as close to real-time basis as technically possible (post-transaction transparency).

(h)   make available public data that meets the needs of Australian regulators, that is compatible with the approaches taken by the international community, and that complements the overall network data available to analytics firms assisting in the prevention of market misconduct.

Info Box 13 A fit-for-purpose trading regime for non-financial products

The Australian market licence framework provided for under Part 7.2 of the Corporations Act applies to entities operating a market for financial products (whether recorded in account-based systems or token-based systems).

While the licensing of market operators is a key part of the financial services regulatory framework, it does not apply to all markets. Some markets that look and function similarly to financial markets are not licensed. For example, spot commodity markets may function in a similar fashion to some financial markets but are not licensed because spot commodities are not financial products. In addition, the National Energy Market, operated by the Australian Energy Market Operator, is not licensed under, or exempt from, Part 7.2.

However, these examples of non-financial markets do not have retail customer participation. The combination of non-financial products with retail participation calls for a fit-for-purpose regulatory framework somewhere between the unlicensed nature of spot commodity markets and the Australian Market Licence regime.

The financial markets licensing regime aims to achieve policy goals that are unique to the functions financial markets fulfil, rather than to markets generally, such as facilitating capital formation, risk management, and enabling Australian businesses to access capital at a lower risk premium than would otherwise be the case. Connecting those who have capital with those who need it via legal rights creates clear positive externalities for investment and the economy generally, the benefits of which accrue across society.

The positive externalities of financial relationships justify government supporting participation in Australian capital markets via stringent regulatory treatment which protects investors. It follows that markets for products which do not create these positive externalities do not warrant such stringent regulatory treatment, and extensive supervision. Products which do not create financial relations between counterparties – such as shareholder-issuer, or creditor-debtor – are unlikely to be capable of creating these same kinds of positive externalities, and correspondingly the markets on which they trade do not warrant such stringent regulation.

Questions (Set 10)

The requirements for a token trading system could include rules that currently apply to 'crossing systems'[78] in Australia and rules that apply to non-discretionary trading venues in other jurisdictions.

Do you agree with suggested requirements outlined above? What additional requirements should also be considered?

Are there any requirements listed above or that you are aware of that would need different settings due to the unique structure of token marketplaces?

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78   Like crossing systems, token trading occurs 'off-book' from the perspective of a network observer. See Market Integrity Rules 2017 for the rules that apply to crossing systems.

5.2 Token staking

Token staking – intermediating an account holder's participation in validating transactions on a public network.[79]

Regulatory outcomes

A framework for the regulation of token staking that:

(a)　provides consumer protections that meet the level expected for 'financial' investments.

(b)　addresses the complexities of interacting with public network infrastructure.

(c)　ensures account holders understand the unique risks of participating in the activity.

Proposed approach

A digital asset platform with a token staking function must:

(d)　provide account holders with a direct entitlement to 'unstake' any staked asset from the facility.[80]

(e)　have and apply objective criteria assessing:

　　(i)　network integrity, uptime, data integrity, neutrality, the existence of conflicts of interests among other network operators

　　(ii)　the security of the software used to validate transaction (including conducting security audits, implementing real-time monitoring, where appropriate)

　　(iii)　the capacity of the staking software to lawfully validate and order transactions and be programmed with sanctions filtering.

(f)　include clear and prominent statements in the facility guide in relation to:

　　(i)　the risks involving in deploying capital to a 'protocol'

　　(ii)　the risks involved in making an 'investment' with no counterparty

　　(iii)　the potential penalties and rewards distribution mechanisms

　　(iv)　the audits and other assurances that have been conducted in relation to the network, the client software, and any smart contracts holding tokens.

79　Sometimes referred to as 'staking-as-a-service'.

80　i.e., that account holders are not entitled simply to the 'value' of their entitlement but can elect to have the assets transferred to them for their own use.

Info Box 14 What is staking?[81]

This proposal recognises that the security of public network infrastructure is important to Australian consumers and businesses who rely on its integrity. These types of networks rely on a community of participants all following the same rules (protocol) to process the same transaction data and record the same result independently. Collectively, the data record is called a 'distributed ledger'. This mechanism is a critical part of the process that gives digital tokens the characteristics of physical tokens.

The concept of 'staking' incentivises participants to be honest in validating transactions. Honest participation is rewarded by the protocol with tokens. Validating transactions and receiving rewards requires a participant to run software that follows the protocol rules. It also requires them to have a 'stake' in the health of the network. Having a stake in the network means holding the network's native token in a specific manner (typically in a smart contract).

A staking participant who runs the correct software will receive the automatic rewards through the protocol. If that participant makes malicious changes to that software (e.g. to join a coordinated attempt harm the network), some or all of the 'stake' will be automatically deleted by the protocol. In simple terms, once running the correct software, a staker contributes to security of the network by *not* doing something.

A person who stakes through an intermediary is making the same contribution. Broadly, the service the intermediary is providing is '*applying the customer's decision to be rewarded by not joining a coordinated attempt to harm the networks*'. Typically, a customer is free to move in and out of the staking arrangements. When they withdraw, they receive their original tokens back plus any rewards.

Australians are participating these networks by holding their tokens on digital asset platforms outside Australia. Stakeholders have indicated this relates to the need for regulatory clarity. Staking intermediary services vary between service providers and between networks. Some arrangements are likely managed investment schemes. This proposal would aim to impose minimum standards for services that do not meet that definition.

Questions (Set 11)

What are the risks of the proposed approach? Do you agree with suggested requirements outlined above? What additional requirements should also be considered?

Does the proposed approach for token staking systems achieve the intended regulatory outcomes? How can the requirements ensure Australian businesses are contributing positively to these public networks?

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81   This box describes staking generally. Staking is used in many different forms for the integrity of public network infrastructure across the ecosystem, each have their own incentive mechanisms and it is acknowledged that they may not be accurately described by the generalisations in this box.

5.3 Asset tokenisation

Asset tokenisation – intermediating the creation and exchange of platform entitlements backed by tangible and intangible non-financial product assets.

Policy goals and regulatory outcomes

A framework for the regulation of asset tokenisation that:

(a) enables digital asset facilities to intermediate the sale of entitlements by producers.

(b) functions similarly to other digitised forms of value such that tokens backed by goods like collectables or fine wine can be consumed similarly to gift cards or gift certificates.

(c) complements the forthcoming 'stored value facility' regime and maintain consistency with internationally recognised approaches.

(d) facilitates a transparent and trustworthy framework for digital assets representing 'Australian made' products and services, which can compete with the billions of dollars of digital assets circulating globally in an unregulated manner.[82]

(e) is broadly consistent with the European Union's 'Markets in Crypto Assets' (**MiCA**) framework for asset-referenced tokens.

Proposed approach

A digital asset platform with an asset tokenisation function must:

(f) include in the facility guide:

   (i) 'terms and conditions for token holders' that would apply to token holders who have not onboarded to the platform as customers.

   (ii) 'terms and conditions of order' and associated order forms in relation to any ongoing sale of entitlements to products that need to be sourced from producers.

(g) have the technical capacity (together with software auditors, engineers, and data analysts) to:

   (i) evaluate the security, fee structures, and consensus mechanisms of public network infrastructure to ensure the appropriate balance between costs and security.

   (ii) operate nodes to mitigate the impact of critical network events such as forks and rollbacks, including protecting the integrity of internal copies of public databases.

(h) use tokens standards that can be programmed to:

   (i) blacklist sanctioned addresses, embed permissions, and incorporate time constrained access, where appropriate.

   (ii) enable the platform provider to respond to instances of token theft, Court orders, and regulator notifications by freezing tokens, removing their linked platform entitlements, and relinking those platform entitlements to tokens controlled by the original owners, the Court, or a regulator.

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82 This would be similar to the approach taken by Singapore where there will be a 'MAS regulated stablecoin' marker that cannot be used by or displayed in relation to other stablecoins. It is an alternative to mandating that only tokens created through digital asset facilities in Australia can be sold in Australia.

(i)   enter into a written agreement with market makers to ensure liquidity in the secondary market unless platform entitlement can be exercised by all token holders (subject to reasonable, non-burdensome, customer onboarding requirements such as KYC).

Info Box 15 The need for an asset tokenisation framework

The process of creating an asset-backed token is relatively simple. A person can 'tokenise' an existing asset simply by agreeing or declaring that any holder of a particular token is entitled to some identified asset. However, the systems required for ensuring assets are safely held and instructions to exercise entitlements can be processed in a timely manner are not simple.

In addition to risks equivalent to those generated by existing financial services, the risks of unregulated entities continuing to be the primary method of tokenisation are significant. These include counterparty risks, fraud risks, Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) risk, sanctions compliance and reputational risks to the markets for Australian products.[83]

Questions (Set 12)

How can the proposed approach be improved?

Do you agree with the stated policy goals and do you think this approach will satisfy them?

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83   For example, see ABC, Perth Mint cryptocurrency token under a cloud.

5.4 Funding tokenisation

Funding tokenisation – intermediating the sale of entitlements to fund the development of 'non-financial' products and services.[84]

Policy goals and regulatory outcomes

(a) Address and reduce consumer harms from unconventional fundraising schemes.

(b) Support Australian entrepreneurs, creative producers, researchers, not-for-profits, and software developers, while implementing controls to mitigate harmful offers and hyper-financialisation.

(c) Require tokenised 'non-financial fundraising' to be intermediated by an independent platform provider.

(d) Focus financial service regulations primarily on the intermediary platform responsible for the financial-like managements of funds and platform entitlements. Ensuing an appropriate liability and compensation structure, consistent with the non-financial agreement between parties.

(e) Create a regulated system that is user-friendly for fundraisers, by mirroring existing non-financial fundraising platforms in Australia like Kickstarter in terms of accessibility for individual or group 'projects' but with additional transparency and disclosures.

(f) Leverage the existing financial advice regime for platforms to mitigate the unregulated promotion of digital assets during their developmental stage.

Proposed approach

A digital asset platform with a funding tokenisation function must:

(g) provide basic fundraising disclosure documents, commensurate to the nature of the fundraising being 'non-financial',

(h) ensure an efficient, honest, and fair distribution of facility tokens to backers. These facility tokens should be either:

  (i) non-fungible tokens (**NFTs**) with a 1:1 entitlement for exchanging the platform entitlement for the supported product or service; or

  (ii) fungible tokens indicating an entitlement to acquire a portion of the product or service that was 'backed'.

(i) program tokens to remain non-tradeable during the product or service's developmental phase.

(j) meet the expectations of a financial services provider when:

  (i) Implementing KYC protocols for projects and backers.

  (ii) Coordinating a milestone-driven fund release for projects.

  (iii) Publishing disclosure documents.

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84 The Financial System Inquiry Final Report, 2014 (**Murray Inquiry**) described non-financial fundraising as being '*where entities seek donations in exchange for some non-financial reward*' (see page 178). ASIC uses the term 'non-investment' funding to describe '*a donation to support a cause or pre-purchase a good or a service that will be made using the funds raised*' (see ASIC RG 262 Crowdsource funding: Guide for intermediaries).

(iv)   Ensuring transparent communication pathways between the project team and backers.

(v)   Having sole responsibility for the creation and distribution of tokens to backers.

(vi)   Overseeing software audits, inclusive of tokens and their respective networks.

(k)   Lodge the following with ASIC before onboarding clients.[85,86]

(i)   a facility guide that transparently states the non-financial nature of the investment or donation and the product or service that will be created; and

(ii)   'terms and conditions for token holders' for release if the project is successful.

(iii) marketing material about the intended utility or practical benefit of the product or service to be created, replicating the MiCA approach of pre-prepared marketing materials.

(l)   not limit their liability for misstatements within the 'terms and conditions' document

(m)   only relate to one 'project' and wound down after the arrangement loses it financial-like nature (i.e. when the product or service has been delivered or failed).

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85   Similar to MiCA, given this is non-financial fundraising this would be for convenience only, not for review and approval. It seeks a balance between 'Kickstarter' like fundraising regulation under Australian consumer law and securities regulation.

86   Empowering ASIC to make stop orders if the project is selling equity or other securities promoting the donation or presale as a financial investment.

Info Box 16 The need for a tokenised crowdfunding regime

The regulatory uncertainty around the treatment of token sales is harming Australian consumers, impacting the competitiveness of Australian businesses, and slowing conventional investments into the Australian economy.

Consumer harms occur because crowdsource funding is occurring indirectly without a regulatory framework. Projects commonly seek funding through conventional channels (e.g. from non-retail investors) in exchange for equity *and* an allocation of tokens. The tokens represent an entitlement to use or receive a product or service once it is developed. When these tokens are sold directly into the secondary market by these investors, it can be a **harmful, unconventional fundraising arrangement**.

For example, it is common for early non-retail investors to unlock the value of their equity investments through retail investors – not by selling their equity investment *after* the successful development of the product or service but – by *pre-selling* the product or service via tokens in the unregulated secondary market. In some cases, the secondary market sales occur after heavy promotion of the future potential of the product or service, in circumstances that are similar to pump and dump schemes.

This proposal aims to address consumer harms by recognising that non-financial fundraising is a capital formation tool that should be regulated. Regulation that is commensurate with the non-financial nature of the entitlements to products or services being developed can be a legitimate method of aiding broader innovation and competition in the economy. For example, projects that have raised funds in this way have developed open-source software that is widely used by governments and institutions globally. Requiring fundraising to occur via digital asset facilities would also reduce the harms from misrepresentation of the true entitlement of the tokens.

By imposing a regulatory framework around the issuance of these non-financial promises to future goods and services, the framework can contribute to the elimination of harmful unconventional fundraising and support small businesses and non-profits in Australia.

Questions (Set 13)

Is requiring digital asset facilities to be the intermediary for non-financial fundraising appropriate? If so, does the proposed approach strike the right balance between the rigorous processes for financial crowdsource funding and the status quo of having no formal regime?

What requirements would you suggest be added or removed from the proposed approach? Can you provide an alternate set of requirements that would be more appropriate?

6. Other activities

The proposed framework covers asset holding arrangements involving digital assets by making these a 'digital asset facility'. The existing financial services laws will apply to all activities involving financial products, including digital assets that are financial products. The 'financialised functions' regime covers specific activities that do not involve financial products. This leaves an intentional gap for **'non-financialised activities that involve digital assets that are not financial products'**.

The intention is to maintain the existing regulatory perimeter for businesses using tokens for reasons other than financialised functions. The aim will be to allow businesses in this category to engage platform providers and use a 'custody only' digital asset facility without becoming a dealer and without the platform provider becoming a secondary service provider to that businesses' customers.

A 'custody only' digital asset facility may also be necessary where an existing financial services business **'holds digital assets that are not financial products *as part of a financial product or financial service*'** (e.g. an exchange traded fund that holds bitcoin or an operator of derivatives exchange using digital asset collateral). The requirements outlined in this paper would need to be implemented to ensure existing regulated arrangements in this category were not negatively impacted.

Proposed approach

A platform provider can provide a 'custody only arrangement' subject to the platform provider entering a written agreement with any account holder using the facility for business purposes, which must set out:

(a)   the reasonable rights that each party will have in relation to record keeping, ongoing review and monitoring, and auditing that would be necessary to ensure compliance with the financial services laws; and

(b)   the responsibilities of each party to cover losses incurred by the account holder's customers due to the acts and omissions of the platform provider under the facility contract.

(c)   that the business will not hold out that the transactional functions it performs for customers are regulated, unless they are.

Info Box 17   Dedicated custody platform for other activities

This approach maintains the status quo for financial products, and financial markets. Financial products involving tokens (e.g., exchange traded funds and (previously) derivative exchanges) would be able to access a regulated custody solution in the same way they access unregulated custodians currently. It also allows businesses (like healthcare, video games and ticketing businesses) that use tokens for non-financial purposes to access an asset holding arrangement for digital assets without requiring them to get an AFSL.

Activities for future consideration

The activities below are not in scope for this proposal paper. However, they are activities that may require regulatory fixes beyond incorporating them into the framework proposed in this paper. The Government would like to hear about their importance, prevalence, and potential means to address them.

Debenture-like arrangements

(d) The proposed baseline transactional rules for digital asset facilities require that platform entitlements be fully backed by in-kind assets. While appropriately licensed and authorised platform providers could create leveraged products that do not break this rule (e.g. perpetual swaps), a platform provider could not lend out assets held on behalf of account holders or token holders. This means the product offerings like those of collapsed firms such as Celsius (i.e. on-lending stablecoins borrowed from consumers to third party hedge funds) could not be offered through digital asset facilities.

(e) However, consumers extending credit to a business in the form of tokens is a product offering that stakeholders have identified lacking regulatory clarity. These types of arrangements may fit the definition of a managed investment scheme and are often structured similarly to debentures, particularly when investors are lending stablecoins. However, they may not meet the existing definition of 'debenture', if the consumer lends the business tokens (i.e. does not lend 'money'). Some businesses take advantage of this by offering products that involve the business borrowing tokens (e.g. stablecoins) from consumers, which they convert to money and use for their own business purposes. This type of unsecured lending could be addressed by:

(i) Changing the definition of 'money' for the purposes of a debenture to include 'stablecoins',

(ii) Changing the definition of 'debenture' to refer to 'money or stablecoins',

(iii) Prohibiting the lending of stablecoins from consumers to businesses generally, or

(iv) Creating an activity for lending and borrowing digital assets under the 'financialised functions' regime proposed in this paper.

Margin lending-like arrangements

(f) Margin lending is regulated under the Corporations Act when a loan is secured against a 'marketable security'. A digital asset that is not a financial product is not a marketable security. However, a lending arrangement for that same digital asset may fit the definition of 'credit', and therefore be regulated under the Credit Act. Some intermediaries have offered digital asset margin lending arrangements. This could be addressed by:

(i) changing the definition of 'marketable security' to include digital assets that are not financial products, or

(ii)   creating an activity for lending and borrowing digital assets under this digital asset regime.

Questions (Set 15)

Should these activities or other activities be added to the four financialised functions that apply to transactions involving digital assets that are not financial products? Why? What are the added risks and benefits?

7. Next steps

Feedback

Feedback is sought on the questions throughout the paper. A complete list of questions can be found at **Annexure 3**. Your feedback will assist in establishing a fit-for-purpose framework to protect consumers and support innovation. The closing date for written submissions is 1 December 2023. Exposure draft legislation is expected to be released in 2024.

Implementation

A **12-month transitionary period** is proposed to commence upon Royal Assent. This allows an appropriate amount of time for industry participants to plan and make changes to ensure compliance and obtain a licence where required.

> ## Questions (Set 16)
>
> Is this transitionary period appropriate? What should be considered in determining an appropriate transitionary period?

Annexure 1: International approaches

While there are similar stated objectives across jurisdictions for regulating digital asset providers, different approaches have emerged. Some have initiated bespoke regulatory frameworks for the digital asset ecosystem, and others are in the process of modernising existing regulatory frameworks.

Globally there has been a recognition that while many tokens are not 'financial products', or the equivalent designation in that jurisdiction, many of the regulations created for those products and related services can be appropriately applied to protect consumers. The jurisdictional approaches outlined below reflect the state of play as of September 2023.

European Union

The European Union has established the Markets in Crypto-Assets (MiCA) Regulation, which is a comprehensive bespoke framework for crypto assets and the licensing of crypto asset service providers and issuers. It provides specific rules for crypto assets and related services and activities.

Crypto assets that fall under existing EU financial services legislation would remain regulated under the existing regulatory framework. Certain firms subject to EU financial services legislation would be allowed to provide all or some crypto asset services without being required to obtain an authorisation as a crypto asset service provider under MiCA Regulation if they provide their competent authorities with certain information before providing those services for the first time. Those firms would be subject to all requirements applicable to crypto asset service providers apart from matters already covered by their respective legislation under which they were authorised.

MiCA differentiates between three types of crypto tokens: Utility Token, Asset-referenced Token and E-Money Token, though notes that this distinction is only applicable where the tokens are non-financial. For example, if a utility token is a financial asset, it would be regulated under the existing EU financial services legislation. At a high level, digital asset facilities that provide services to third parties will be subject to the regulation. The regulation entered into force on 29 June 2023, with the provisions on crypto asset service providers applying from 30 December 2024. The European Supervisory Authorities are currently developing the detailed specifications of key obligations.

Canada

Crypto trading platforms are subject to existing requirements under securities legislation in Canada, as platforms facilitate the buying and selling of crypto assets, and the user's contractual right to the crypto asset may constitute a security. Some crypto assets themselves could be securities or derivatives. The platforms are subject to existing requirements under securities legislation. They must be regulated by a Canadian securities regulator, requiring them to register with securities regulators and comply with certain obligations intended to protect investors including implementing controls to protect assets and funds, managing the risks arising from their business, limiting the types of assets traded, meeting their obligations to clients, and providing sufficient information to their customers.

The requirements that will be applicable to a crypto trading platform will depend on how it operates and what activities it undertakes. A pre-registration undertaking is required as a precondition to allow unregistered platforms to continue to operate while they pursue registration and related relief.

United Kingdom

HM Treasury has proposed a phased approach for regulating crypto assets intending to bring the financial services regulation of crypto asset related financial activities within the existing framework. Phase 1 includes a focus on 'fiat-backed stablecoins'.

HM Treasury does not intend to expand the definition of 'financial instrument' to currently unregulated crypto assets. Rather, it intends to maintain a technological neutral focus on activities rather than the assets themselves. This is achieved by expanding the definition of 'specified investment' to include crypto assets. The FCA has oversight and rulemaking powers for activities performed in relation to specified investments, rather than the investment itself. The proposed regulatory framework for crypto assets is not intended to impose regulation on any underlying non-financial services activity which a crypto asset might be used for. If the activity is non-financial in nature this may be covered by other laws or regulations.

Proposed scope of crypto asset activities to be regulated include issuance, payment, exchange, investment and risk management, lending, borrowing and leverage, safeguarding and/or administration (custody), and validation and governance. The general rule making powers of the Financial Conduct Authority (FCA) would also be available, enabling the FCA to design regulations for newly added activities.

The UK Government has also legislated to bring qualifying crypto assets within the scope of the financial promotion regime. From 8 October 2023, all firms marketing crypto assets to UK consumers, including firms based overseas, must comply with the financial promotion regime. The definition of a financial promotion is broad and applies in a technologically neutral way.

Singapore

Digital Payment Token service providers are licensed under the *Payment Services Act*. Offers of digital tokens which constitute securities, securities-based derivatives contracts or units in a collective investment scheme are subject to the same regulatory regime as similar traditional products under the *Securities and Futures Act 2001*. Recent consultations relating to regulatory measures for digital payment token services and market integrity have also been undertaken.

Annexure 2: List of consultation questions

All the consultation questions, posed in this paper, are listed below. Please provide your responses to the following consultation questions and include examples where relevant.

Questions (Set 1)

Prior consultation submissions have suggested the Corporations Act should be amended to include a specific 'safe harbour' from the regulatory remit of the financial services laws for networks and tokens that are used for a non-financial purpose by individuals and businesses.

What are the benefits and risks that would be associated with this? What would be the practical outcome of a safe harbour?

Questions (Set 2)

Does this proposed exemption appropriately balance the potential consumer harms, while allowing for innovation? Are the proposed thresholds appropriate?

How should the threshold be monitored and implemented in the context of digital assets with high volatility or where illiquid markets may make it difficult to price tokens?

Questions (Set 3)

What would be the impact on existing brokers in the market? Does the proposed create additional risk or opportunities for regulatory arbitrage? How could these be mitigated?

Questions (Set 4)

Are the financial requirements suitable for the purpose of addressing the cost of orderly winding up? Should NTA be tailored based on the activities performed by the platform provider?

Does the distinction between total NTA needed for custodian and non-custodian make sense in the digital asset context?

Questions (Set 5)

Should a form of the financial advice framework be expanded to digital assets that are not financial products? Is this appropriate? If so, please outline a suggested framework.

Questions (Set 6)

Automated systems are common in token marketplaces. Does this approach to pre-agreed and disclosed rules make it possible for the rules to be encoded in software so automated systems can be compliant?

Should there be an ability for *discretionary* facilities dealing in digital assets to be licensed (using the managed investment scheme framework or similar)?

Questions (Set 7)

Do you agree with the proposal to adopt the 'minimum standards for asset holders' for digital asset facilities? Do you agree with the proposal to tailor the minimum standards to permit 'bailment' arrangements and require currency to be held in limited types of cash equivalents? What parts (if any) of the minimum standards require further tailoring?

The 'minimum standards for asset holders' would require tokens to be held on trust. Does this break any important security mechanisms or businesses models for existing token holders? What would be held on trust (e.g. the facility, the platform entitlements, the accounts, a physical record of 'private keys', or something else)?

Questions (Set 8)

Do you agree with proposed additional standards for token holders? What should be included or removed?

Questions (Set 9)

This proposal places the burden on all platform providers (rather than just those facilitating trading) to be the primary enforcement mechanism against market misconduct.

Do you agree with this approach? Should failing to make reasonable efforts to identify, prevent, and disrupt market misconduct be an offence?

Should market misconduct in respect of digital assets that are not financial products be an offence?

Questions (Set 10)

The requirements for a token trading system could include rules that currently apply to 'crossing systems'[87] in Australia and rules that apply to non-discretionary trading venues in other jurisdictions.

Do you agree with suggested requirements outlined above? What additional requirements should also be considered?

Are there any requirements listed above or that you are aware of that would need different settings due to the unique structure of token marketplaces?

Questions (Set 11)

What are the risks of the proposed approach? Do you agree with suggested requirements outlined above? What additional requirements should also be considered?

Does the proposed approach for token staking systems achieve the intended regulatory outcomes? How can the requirements ensure Australian businesses are contributing positively to these public networks?

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87   Like crossing systems, token trading occurs 'off-book' from the perspective of a network observer. See Market Integrity Rules 2017 for the rules that apply to crossing systems.

Questions (Set 12)

How can the proposed approach be improved?

Do you agree with the stated policy goals and do you think this approach will satisfy them?

Questions (Set 13)

Is requiring digital asset facilities to be the intermediary for non-financial fundraising appropriate? If so, does the proposed approach strike the right balance between the rigorous processes for financial crowdsource funding and the status quo of having no formal regime?

What requirements would you suggest be added or removed from the proposed approach? Can you provide an alternate set of requirements that would be more appropriate?

Questions (Set 14)

Do you agree with this proposed approach? Are there alternate approaches that should be considered which would enable a non-financial business to continue operating while using a regulated custodian?

Questions (Set 15)

Should these activities or other activities be added to the four financialised functions that apply to transactions involving digital assets that are not financial products? Why? What are the added risks and benefits?

Questions (Set 16)

Is this transitory period appropriate? What should be considered in determining an appropriate transitionary period?

Annexure 3: Glossary

Term	Meaning
account holder	person named in the temporary registry of a digital asset facility to which a platform entitlement accrues
account-based system	a system of record for entitlements that accrue to a specific person identified in a record (i.e. an account). It is used in a broad sense to refer to accounts, registries, depositories, lists, etc.
custody software	software used to hold tokens
digital asset	a token and the entitlements it grants a holder (i.e. a digital bearer asset)
digital asset facility	a proposed financial product facility for holding digital assets and assets backing digital assets
digital asset platform	a multi-function platform comprised of a digital asset facility with additional administrative and transactional functions
entitlement	rights, benefits, or claims flowing from any kind of arrangement (encompassing legal rights, commercial arrangements, established conventions and, social understandings)
platform entitlements	transferable entitlements issued by a digital asset platform that can be exercised for delivery or transfer of assets held by the facility
IDPS	Investor Directed Portfolio Services (an unregistered managed investment scheme structured as a platform for holding and dealing in assets on behalf of investors as directed by the investors)
facility contract	the standard for contract between a platform provider and clients setting out the rules and arrangements that creates the digital asset facility
facility guide	a disclosure document that meets the tailored requirements for digital asset facilities, which together with the facility contract stand in as the financial services guide and product disclosure statement
platform token	a token that attaches a platform entitlement.
platform provider	the person or persons responsible for the obligations owed to clients under the terms of the asset holding arrangement that constitute a digital asset facility
financialised function	One of the five activities outlined in the paper that will attract additional minimum standards when performed by a facility in relation to digital assets that are not financial products: • asset tokenisation • funding tokenisation • token **staking** • token trading
full factual control	means positive control (a factual ability to use, dispose of, or transfer an asset) and negative control (a factual ability to exclude other from using the asset)
token	a record in a token-based system. Used in this paper to mean '*a digital token with the characteristics of a physical token*'. Could be read as 'crypto token'
token holder	a person in possession (factual control) of a token and to whom the token-linked entitlements accrue
token staking	a financialised functions for intermediating an account holder's participation in validating transactions on a public network

Term	Meaning
token-based system	a system of record for entitlements that accrue directly to any person holding a specific record (i.e. a token)
token trading	a financialised function for intermediating the exchange of platform entitlements between account holders
token marketplace	a 'bring your own asset' marketplace that accommodates entitlements recorded in token-based systems (consisting of a marketplace operator (platform provider) acting as a temporary custodian)
transactional function	a multilateral function embedded into a digital asset facility that facilitates transactions between account holders