28 February 2025

ripple

Digital Assets Team
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Email: digital.assets@asic.gov.au

Dear Sir or Madam,

Ripple Labs Inc. ("Ripple") welcomes the opportunity to comment on the Australian Securities and Investments Commission ("ASIC") consultation paper 381 (the "Consultation") setting out proposed updates to Information Sheet 225 *Crypto-assets* ("INFO 225"),[1] published on 4 December 2024.[2]

Ripple would like to thank ASIC for the in-depth and comprehensive analysis that has been undertaken in drafting the Consultation, as well as for the opportunity to provide our comments. We respectfully request that you take them into consideration as you consider the policy direction and development of guidance on digital assets in Australia.

1. General comments and policy considerations

We welcome ASIC's initiative to seek feedback on proposed updates to INFO 225 on the regulatory perimeter for digital assets. This is a crucial step in clarifying the scope of existing regulatory frameworks, and ensuring they remain fit for purpose in the rapidly evolving digital asset ecosystem.

As digital asset innovation accelerates, it is imperative that regulatory guidance balances the promotion of innovation with the protection of investors and the broader financial system. Clear and consistent regulatory frameworks not only foster market confidence, but will also position Australia as a leader in digital asset governance.

Therefore, we respectfully request ASIC to consider the following key principles as you review the policy orientation and formulation of guidance on digital assets in Australia:

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[1] See https://asic.gov.au/regulatory-resources/digital-transformation/crypto-assets/, Information Sheet 225 *Crypto-assets*

[2] See https://download.asic.gov.au/media/ncfckqeq/cp381-published-4-december-2024.pdf, Updates to INFO 225: Digital assets: Financial products and services

- Proportionality in regulation - it is essential that ASIC ensures that the regulatory burden on emerging businesses is proportionate to the risks posed by their activities;
- Global alignment - it is also important for ASIC to align Australian regulations with international best practices to promote cross-border collaboration and reduce regulatory arbitrage;
- Clarity on definitions - providing clear definitions and practical examples will help market participants understand their obligations under the regulatory perimeter; and
- Stakeholder engagement - finally, maintaining open channels of dialogue with industry participants will ensure that regulatory updates remain informed by real-world developments and challenges.

This consultation represents an important opportunity to refine and future-proof Australia's approach to digital asset regulation.

Keeping these key principles in mind in responding to the Consultation, we wish to highlight the following policy considerations.

a. Regulatory treatment of stablecoins

We wish to highlight an overarching concern regarding the potential expansion of the regulatory perimeter under INFO 225 to stablecoin issuers and intermediaries.

Specifically, we see challenges with this approach given the Australian Government Treasury's (the "Treasury") existing proposal[3] to regulate 'payment stablecoins' as a form of stored value facility ("SVF"). This raises the risk of stablecoin issuers and intermediaries potentially being required to obtain multiple licences, which may result in unnecessary duplication and regulatory burden.

Instead, as expanded upon in our responses to the consultation questions below, we believe that such assets are better suited to the Treasury's proposed framework and that clarity should be provided to avoid confusion on the regulatory treatment of stablecoins in Australia.

Furthermore, the Consultation and draft of INFO 225[4] provide limited guidance on stablecoins, apart from yield-bearing examples. ASIC appears inclined to treat stablecoins as non-cash payment facilities, focusing on the token itself rather than the broader technological and contractual framework. This approach risks oversimplifying the regulatory analysis, and could impose unnecessary licensing obligations on stablecoin issuers and intermediaries.

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[3] See https://treasury.gov.au/sites/default/files/2023-06/c2023-403207-cp.pdf, Australian Government Treasury consultation paper on Payments System Modernisation (Licensing: Defining Payment Functions) and https://treasury.gov.au/sites/default/files/2023-12/c2023-469663-cp.pdf, Australian Government Treasury consultation paper on Payments System Modernisation (Regulation of Payment Service Providers)

[4] See https://download.asic.gov.au/media/iktkpn20/attachment-to-cp381-published-4-december-2024.pdf, Draft updated Information Sheet 225 Digital assets: Financial products and services

Therefore, should ASIC proceed with stablecoins being within the scope of INFO 225, we recommend that ASIC provide detailed examples of different stablecoin structures and clarify their regulatory treatment, keeping in mind the Treasury's proposals as well.

b. Practical concerns on no-action relief requirements

The Consultation proposes a class no-action position for digital asset businesses that are in the process of applying for (or applying to vary) an Australian financial services ("AFS") licence, Australian market licence or clearing and settlement license, subject to specific conditions. In principle, Ripple is supportive of a class-no action position, as we believe it will support industry participants with transitioning to the new requirements.

However, one of the conditions for such no-action relief includes applying for an AFS license within six months of the publication of the final INFO 225.

While this requirement is likely intended to encourage timely compliance, the proposal raises several practical concerns and key questions remain about the applicability of no-action relief, including:

- Whether businesses operating prior to the publication of the Consultation are covered, and also whether the relief covers businesses who have been engaging with ASIC on an AFS license but have not yet launched their offering to the market?
- Will new token listings or products and services launched after the publication of the Consultation benefit from the no-action relief?
- Whether no-action relief will apply for a business that applies for an AFS license, but the application is considered incomplete by ASIC?

ASIC has also not clarified the criteria or timeline for withdrawing no-action relief in the Consultation, which could leave AFS license applicants in a perilous position.

c. A nuanced approach is needed

Ripple believes that while the Consultation aims to clarify the regulatory framework for digital assets, it has somewhat oversimplified the inherently complex process of determining whether a digital asset qualifies as a financial instrument under existing financial services laws. For example, paragraph 27 of the Consultation asserts that ASIC *"considers many digital assets (either on their own or combined with other products or services) to be financial products"* under the Corporations Act, 2001 ("Corporations Act").[5] We find this broad characterization both problematic and inconsistent with prior guidance issued by both ASIC and the Treasury.

[5] See https://www.legislation.gov.au/C2004A00818/latest/text, Corporations Act, 2001

As the Treasury has previously highlighted, digital assets *"are not a homogenous asset class."*[6] Each digital asset often possesses distinct features and rights, making it impractical to apply a one-size-fits-all approach. Consequently, any determination of whether a digital asset qualifies as a financial product must be conducted on a case-by-case basis to account for these unique characteristics.

This is an area that has also challenged regulators globally, evidence of which can be seen in the industry responses to the European Securities and Markets Authority's attempt to clarify the conditions and criteria for the qualification of crypto-assets as financial instruments earlier this year.[7]

Therefore, we find it problematic to broadly categorise many digital assets as financial products when combined with other products or services, as suggested by ASIC's statement.

We believe the proposed approach risks undermining the significant efforts undertaken by the Treasury, ASIC, and industry over the years to develop a nuanced and effective regulatory framework. Such a framework should be designed to balance the needs of the industry with robust consumer protections, and overly broad classifications such as this risks jeopardising this progress.

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With this overview, Ripple respectfully submits the following responses to the questions set forth in the Consultation in the attached Appendix.

We welcome the opportunity for ongoing engagement with ASIC on this Consultation and any related regulatory guidance for digital assets. Should ASIC wish to discuss any of the points raised as part of this feedback to the Consultation, please do not hesitate to contact Rahul Advani (Senior Policy Director) at radvani@ripple.com and Caren Tso (Policy Manager) at ctso@ripple.com.

Sincerely,

Ripple Labs Inc.

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[6] See https://treasury.gov.au/sites/default/files/2023-10/c2023-427004-proposal-paper-final.pdf, Regulating Digital Asset Platforms - Proposal paper

[7] See https://www.esma.europa.eu/sites/default/files/2024-12/ESMA75453128700-1323_Final_Report_Guidelines_on_the_conditions_and_criteria_for_the_qualification_of_CAs_as_FIs.pdf, Final Report - Guidelines on the conditions and criteria for the qualification of cryptoassets as financial instruments

APPENDIX

Ripple respectfully submits the following feedback to the questions set forth in Section A3, B1, and B2 of the Consultation.

‘Stablecoins’ and wrapped tokens

A3: We are considering whether to develop additional examples for INFO 225 on wrapped tokens and ‘stablecoins’ that may be financial products. We are seeking feedback on the practical implications for businesses.

A3Q1: Do you think it would be helpful to include an example of a wrapped token and/or a ‘stablecoin’ in INFO 225? If so, do you have any suggestions on the features of the potential examples in paragraphs 20–21?

As outlined in the *General comments and policy considerations* section above, Ripple notes the features provided by ASIC for a ‘stablecoin’ to be considered a financial product, and believes that a digital asset with such features should instead be considered a ‘payment stablecoin’ under the Treasury’s proposed payment stablecoin regime. Therefore, should ASIC proceed with ‘stablecoins’ being within the scope of INFO 225, we recommend that ASIC provide detailed examples of different stablecoin structures and clarify their regulatory treatment, keeping in mind the Treasury’s proposals as well.

A3Q2: What are the practical implications for businesses (e.g. for issuers or intermediaries) if wrapped tokens or ‘stablecoins’ with these features were classified as financial products? Please give details.

Ripple notes that ASIC has acknowledged that the potential application of the current law as discussed above may be materially different from how the Government’s proposed payment service licensing and digital asset facilities (“DAF”) and digital asset platforms (“DAP”) reforms may potentially apply to ‘stablecoins’ and wrapped tokens.

While we appreciate the efforts of ASIC to provide regulatory clarity for these types of assets, we believe the inclusion of ‘stablecoins’ under INFO 255 and under the AFS license regime raises significant practical and policy concerns, particularly when considered alongside the Treasury’s proposal to regulate payment stablecoins as a type of SVF.

By requiring issuers and intermediaries of ‘stablecoins’ to apply for an AFS license now and then an SVF license in the near future, such proposals will instead have the effect of creating uncertainty, additional costs, and unnecessary regulatory burdens, without any commensurate benefit from a consumer protection perspective.

Additionally, it is unclear from the language in the Consultation whether the application of the current law would be for AUD-backed ‘stablecoins’ only. The

proposal states that ASIC would consider a stablecoin with features including the expectation that the token maintains "*a stable price and value in Australian dollars (AUD), and the tokens are issued at par value*". It would be useful to clarify whether the intention of ASIC is to apply such requirements to AUD-backed 'stablecoins' only, or to a wider range of 'stablecoins' backed by other currencies or assets.

We believe that 'stablecoins' operate more as payment instruments or forms of stored value rather than as financial products given their design and intended use cases (i.e. pegged to a stable asset and designed to maintain their value). Such 'stablecoins' typically do not seek capital appreciation, or carry exposure to market or credit risk. Therefore, we consider these assets to be more appropriately regulated under the SVF license regime, which aligns more closely with their intended purpose and practical applications.

We therefore ask that ASIC reconsider the inclusion of 'stablecoins' under the revisions to INFO 225 and the AFS license framework given that the Treasury's payment stablecoin regulation, once in effect, should adequately address the associated risks making an AFS license requirement unnecessary and burdensome for no reason.

A3Q3: Would any transitional provisions or regulatory relief be needed to facilitate transition from regulation of a wrapped token or a 'stablecoin' as a financial product under the current law to the Government's proposed approaches to 'stablecoins' and wrapped tokens? Please give details.

As per our answer to A3Q2 above, we do not believe 'stablecoins' should be considered financial products under the Corporations Act, particularly in light of Treasury's proposal to regulate such assets as a type of SVF. Therefore, we do not believe that it should be necessary to first require issuers to licence under the AFS framework, before then applying for an SVF licence.

Nevertheless, if ASIC were to proceed with this proposal, we believe that a transitional period would be required for issuers and intermediaries when moving from an AFS license regime to an SVF licence regime.

This would be necessary given the different focuses of the two frameworks, i.e. the investor protection, disclosures, and compliance obligations of the AFS license regime, compared to the more relevant requirements centred around payment system efficiency and stability that an SVF framework would likely entail.

As well as transitioning from one regulatory framework to another, issuers and intermediaries would also likely be transitioning between regulatory authorities, which would also require time to embed and to manage reporting systems and technical standards such as additional cybersecurity and audit measures from an operational perspective. This is relevant from the perspective that SVF

licensees are also regulated for prudential requirements by the Australian Prudential Regulation Authority ("APRA").

To minimise market disruption, we foresee the need for a transitional period of at least twelve months for firms to submit an AFS license application, given what would be a fundamental shift in the regulatory approach to 'stablecoins'. This would assist in allowing for issuers and intermediaries as well as regulatory authorities to adapt effectively and ensure that the final regime achieves its objectives with minimal disruption. The proposed twelve month period for submitting an AFS license application would also allow firms sufficient time to apply for an SVF licence, any operational adjustments, and industry education to understand the new framework.

ASIC's approach to licensing digital asset businesses

B1: We are considering a class no-action position for digital asset businesses that are in the process of applying for or applying to vary an AFS licence, Australian market licence or clearing and settlement (CS) facility licence. We propose that it would have the following scope and conditions (conditions a-i as outlined in the Consultation)

B1Q1: Do you agree that ASIC should progress with a class no-action position as proposed here? If not, please give reasons.

Ripple is broadly supportive of the proposal by ASIC to adopt a class no-action position for digital asset services that would fall within scope of the existing financial securities laws based on the updates to INFO 225.

However, outlined in the *General comments and policy considerations* section above, the class no-action proposal raises several practical concerns and key questions remain about the applicability of no-action relief. ASIC has also not clarified the criteria or timeline for withdrawing no-action relief in the Consultation, which could leave AFS license applicants in a perilous position. Therefore, we request that ASIC clarify the outstanding questions around no-action relief, namely:

- Whether businesses operating prior to the publication of the Consultation are covered, and also whether the relief covers businesses who have been engaging with ASIC on an AFS license but have not yet launched their offering to the market?
- Will new token listings or products and services launched after the publication of the Consultation benefit from the no-action relief?
- Whether no-action relief will apply for a business that applies for an AFS license, but the application is considered incomplete by ASIC?

B1Q2: Are the proposed conditions appropriate? Are there any additions or changes to the proposed conditions that will be more effective for investor protection?

While Ripple broadly agrees with the proposed conditions set by ASIC, we question whether using the publication date of the updated INFO 225 as a cut off date for the class no-action position would be the most effective approach, given the outstanding questions related to no-action relief.

Instead, ASIC may wish to consider tying the eligibility criteria of the class no-action position to specific operational thresholds such as transaction volumes or number of customers, which we believe will be more important from an investor protection perspective.

B1Q3: Do you agree that the class no-action position should be dependent on a person lodging an AFS licence application or written intention to apply for a market and/or CS facility licence? If not, please explain and suggest an alternative.

Ripple agrees with this proposed condition, and believes it will serve to incentivise proactive compliance.

B1Q4: Should there be a deadline for applying for an AFS licence or commencing pre-lodgement discussions in relation to a market and/or a CS facility licence? Please provide reasons.

Ripple has no comments on this question.

B1Q5: For product issuers, should the no-action position extend to other obligations-for example, to prepare a Product Disclosure Statement (PDS)? Why or why not?

Ripple would support extending the no-action position to other obligations such as the requirement to prepare a PDS. Such preparation can be resource intensive for firms, and requiring such measures during a transitional period could mean that a firm is required to divert resources from its efforts to align with the regulatory framework that it is now within scope of.

As a result of such a requirement and the direction of resources, firms may be forced to temporarily withdraw products during the transitional period, which could potentially lead to market disruption and negatively impact consumers. The extension of the no-action position to such requirements would help mitigate such potential disruptions.

Consideration of AFS licence applications and ongoing obligations

B2: The existing AFS licence processes, regulatory guides and conditions will apply to persons providing financial services in relation to digital assets, including those that are based on the type of financial product involved.

B2Q1: Do you agree that the same regulatory obligations should apply to digital asset and traditional financial products of the same category (e.g. securities, derivatives)? Please explain your response and provide specific examples.

We believe ASIC's approach of "similar activity, similar risk, same regulatory outcome" is flexible and appropriate. However, for it to be effective, regulatory obligations should address these distinctions carefully, avoiding the possibility of mismatched requirements.

While there are some regulatory obligations that should clearly be applicable across the spectrum of financial products, Ripple does not agree that all of the same regulatory obligations should apply to digital assets and traditional financial products of the same category given some of the key characteristics inherent in digital assets that require a more tailored approach.

Specifically, obligations particularly in relation to custody and segregation as well as clearing and settlement should be considered separately given the fundamental differences in the way digital assets operate in these areas.

Additionally, the risk profiles of digital asset securities or derivatives could be very different to that of their traditional financial product equivalents, particularly in the areas of smart contract vulnerabilities, and private key management.

By considering separate standards on tokenised assets based on these unique characteristics, ASIC could address specific risks unique to such products and services.

B2Q2: Are there any aspects of ASIC's guidance that may need to be tailored for digital assets that are financial products?

ASIC's updates to INFO 225 address good practice in relation to custody, risk management, and disclosure requirements for digital assets, which we are supportive of and believe sufficiently covers the unique properties associated with digital assets considered financial products.

In relation to risk management, as mentioned in our answer to B2Q1, we believe ASIC could put further emphasis on the unique risk exposures faced by digital assets that are considered to be financial products, in areas such as smart contract vulnerabilities and private key management.

B2Q3: Do you agree that the approach proposed for custodial and depository services is appropriate for holding custody of digital assets? Do you agree that extending the omnibus client accounts is appropriate for digital assets that are financial products? Please explain, providing examples, if relevant.

As per our answer to B2Q2, we believe that the updated guidance sufficiently covers the unique properties associated with custody of digital assets considered financial products.

B2Q4: In relation to organisational competence, what are your views on what ASIC could consider in applying Option 5 in Regulatory Guide 105 AFS licensing: Organisational competence (RG 105) for entities providing financial services in relation to digital assets that are financial products?

Ripple has no comments on this question.