Shift Markets

Submission to ASIC Consultation Paper 381

Updates to INFO 225 (Digital Assets: Financial products and services)

February 2025

SHIFT

28th February, 2025

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

Via e-mail: digital.assets@asic.gov.au

Re: Comments on Consultation Paper 381
Updates to INFO 225: Digital Assets: Financial products and services

Dear Digital Assets Team,

Shift Markets welcomes the opportunity to contribute to this consultation paper and help shape Australia's evolving regulatory landscape. We commend ASIC for its forward-thinking approach to innovation, ensuring that its systems and requirements remain adaptive and responsive to the dynamic financial landscape. Regulatory frameworks are fortified through active industry engagement and continuous public-private collaboration. We welcome and support ASIC's work towards engagement to build consensus on regulatory approaches.

Inclusion of digital assets to the existing framework is a positive step towards financial inclusion, clarity, innovation and standardisation in Australia's regulatory landscape. While financial markets are well-established, digital assets remain in their early stages, requiring a balance of flexibility and clear guidelines for both existing institutions and new entrants. An open regulatory framework and new proposals will encourage market participation, fostering competition, preventing monopolies, and expanding choices for financial service users. This approach enhances financial stability while providing much-needed clarity and direction.

This submission represents our proactive contribution and suggestions towards a more agile approach to digital assets and the betterment of the financial ecosystem. Our response is focused on proposed worked examples in INFO 225 and the license application process in its entirety. Overall we opine that changes to INFO 225 could contribute towards harmonisation in the treatment of digital assets and essentially aligns with the increasingly global regulatory principle of "same activity, same risk, same regulation".

About Shift Markets

Shift Markets provides trading technology, market access, and regulatory solutions for businesses operating in traditional and digital asset markets. We equip clients with trading environments allowing customisation of liquidity, compliance tools and user management, enabling them to scale securely and meet evolving regulatory requirements. Our expertise spans crypto exchanges, tokenised assets, and forex brokerages, offering businesses the flexibility to navigate digital finance securely and efficiently.

Our regulatory and compliance services help crypto businesses navigate licensing, build AML/CTF frameworks, and align with global standards while maintaining operational flexibility. By integrating financial expertise with regulatory strategy, we support the long-term stability and growth of digital asset businesses. Shift's services are designed to support every stage of launching and operating a trading platform, including market making, regulatory guidance, and ongoing technical support. Our mission is to make blockchain-based finance accessible and scalable for businesses of all sizes—whether market leaders or new entrants—through proven technology, strategic guidance, and industry expertise.

Shift Markets welcomes further dialogue and is committed to continuous engagement with AUSTRAC. Please do not hesitate to contact us at legal@shiftmarkets.com should you require any further clarification or expansion on any of the points mentioned.

Sincerely,

Olohirere Longe
Senior Counsel, Regulatory
Shift Markets

Worked Examples

A2Q1: Do you have comments on any of the proposed worked examples? Please give details, including whether you consider the product discussed may/may not be a financial product.

The Worked examples provide necessary clarity and detail and cover a sufficiently wide scope of digital asset services. Worked examples highlight the nuances of financial products and the involvement with digital assets. The examples are well-structured, covering a broad range of existing and potential projects in a clear and accessible manner. Most importantly, they maintain a strong connection to the definition of a financial instrument and its various interpretations across different scenarios. Emphasising the impact on the financial system provides valuable context, helping those involved in digital asset financial products better understand their regulatory obligations.

A key consideration in digital asset and financial regulation is the impact on the broader financial ecosystem. Many of the worked examples operate within closed-loop systems with minimal participants and limited, predefined use. As seen in Example 3, such systems generally have little to no effect on financial stability. Given their restricted scope and low systemic risk, these examples are appropriately excluded from ASIC's AFS licensing requirements.

Memecoins, tokenised concert tickets, and NFTs are typically excluded from classification as financial products. The memecoin example is rightly excluded, as their value is sentiment-driven rather than tied to market fundamentals. Similarly, tokenised concert tickets lack the expectation of financial return and serve a predefined, limited utility. Emphasising their expiration, intended use, and absence of financial benefit helps distinguish them from financial products. NFTs, such as those in Example 6, are generally excluded from financial product classification. In-game NFTs and membership NFTs, for instance, operate within closed ecosystems and do not typically provide financial returns outside those environments, limiting their impact on the broader financial system. Likewise, concert tickets in Example 10 are event-specific purchases rather than financial products and should be excluded from classification.

However, the classification of digital asset wallets as financial products appears misaligned, as they function as tools rather than financial instruments. A clearer distinction is needed, as custodianship carries greater responsibility. The term "digital asset custodians" may be more appropriate to reflect regulatory oversight, rather than implying individual wallet use.

A2Q2: Are there any additional examples you would like to see included? Please give details of the suggested example(s), and why you consider the digital asset discussed may/may not be a financial product.

Regulatory frameworks should be designed with flexibility to accommodate future developments in digital assets. Regular reviews and updates will help ensure that evolving technologies and use cases are appropriately classified, providing clarity to market participants while maintaining regulatory consistency. The worked examples cover a broad range of participants, but additional distinctions between private projects and publicly available offerings would provide further clarity.

More clarification could be extended to asset custody. Entities that provide direct custody should fall under regulatory oversight, whereas those that do not could be subject to lighter requirements depending on the particular function. Similarly, digital asset facilitators or ecosystem participants such as travel rule integrations, technology infrastructure and due diligence screening tools are often excluded. This aligns with global regulatory trends, where financial regulation typically applies to entities actively conducting business and dealing in financial markets.

Additionally, non-financial investments—such as collectibles, real estate, and art—should remain excluded from regulatory oversight when their value exists independently of a digital asset and varies subjectively among users. Fractionalised ownership of assets like art, real estate, and businesses may also be tokenised. These cases should be explicitly addressed to differentiate financial products from non-financial assets. Utility tokens, which are restricted to an issuer's ecosystem for goods or services, should be excluded as a financial product to avoid unnecessary burdens. A clear distinction should be maintained between assets that function as financial investments or mirror traditional financial services and those that do not.

We take into account NFTs which are provided as an example. The non-fungible nature of NFTs generally makes them unsuitable as financial instruments, which rely on fungibility for their utility. However, additional consideration should be given to the fact that with NFTs (and in general) classification should be based on substance rather than form. If an NFT can be substituted or possess characteristics aligning with the definition of a financial instrument—such as fractionalisation, serialisation, or use for payment or investment—it may fall under regulatory oversight. Fractionalised NFTs, in particular, can undermine their uniqueness and shift them closer to financial product classification. The European Commission's indicators of fungibility provide a useful framework, and the FATF's Updated Guidance on Virtual Assets (October 2021) emphasises that NFTs used for payment or investment purposes should be subject to financial regulation. Given the broad scope of NFTs, a technology-neutral approach focusing on actual use and intended outcome ensures regulatory clarity while allowing for innovation.

While we recognise that this is intended as a living document, a broader scope with well-defined examples would help clarify how different categories are determined. Explicitly outlining categories and their rationale would provide a clearer framework, making it easier to classify emerging products and use cases as the digital asset market evolves. This approach would support regulatory consistency while allowing for adaptability in response to future developments.

Wrapped Tokens and Stablecoins

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?

Yes. Examples are essential for categorising assets and clarifying regulatory expectations. This is particularly important as stablecoins are not always pegged to a currency but may be linked to other stable assets. The distinction between interest-bearing and non-interest-bearing stablecoins is also relevant. A well-defined set of examples helps industry participants identify commonalities and better assess how their offerings align with or differ from identified asset classifications.

A3Q2: What are the practical implications for businesses (e.g. for issuers or intermediaries) in providing services in relation to wrapped tokens and/or 'stablecoins' that are financial products? Please give details.

The classification of wrapped tokens and stablecoins as financial products introduces additional operational, compliance, and technological requirements for issuers, intermediaries, market makers, and technology providers. These businesses must navigate increased regulatory obligations while ensuring market competitiveness, security, and scalability. In general, market participants, in offering services in relation to wrapped tokens or stablecoins, have compliance costs in terms of implementing risk assessment frameworks for client transactions, transaction monitoring, as well as systems to monitor market conditions and manage exposure. and ensuring thorough onboarding and verification processes.

As issuers of wrapped tokens and stablecoins classified as financial products, businesses must prepare for increased operational and compliance requirements. This includes implementing robust reserve management and custody solutions while ensuring effective risk management strategies to address market volatility. Regulatory oversight will necessitate audits and certifications, including financial audits for prospectus disclosures and potential technology infrastructure assessments, such as penetration testing, to demonstrate digital resilience. Beyond meeting baseline

requirements, issuers must consider the long-term costs of maintaining compliance and infrastructure.

Intermediaries facilitating transactions and services for digital assets will need to adapt operations to meet infrastructure demands, such as real-time transaction monitoring, enhanced reporting, and strengthening data protection measures. Similarly, market makers engaging with these financial products must invest in advanced trading platforms equipped with sophisticated risk management tools. Effective hedging strategies are crucial to maintaining liquidity and mitigating exposure. As part of service delivery, brokers should implement systems for efficient order execution, reporting, and market monitoring to manage exposure effectively. Best practices include proactive measures to prevent market manipulation and ongoing oversight of liquidity and counterparty risks.

Regulatory compliance is essential but can be resource-intensive and costly for smaller firms. Strategic partnerships can help mitigate these burdens. Financial entities that operate globally should have firm-wide policies which align with international standards, as jurisdictional differences may complicate cross-border operations. A stable regulatory framework with clear expectations of market participants minimises the need for frequent adjustments, reducing compliance costs. Established entities serving multiple markets will be better positioned to meet these requirements, and the inclusion of digital assets in Australia is likely to extend their service offerings, increasing competition while improving efficiency and reducing operational silos. However, expanding services may also lead to rising hiring costs to support a new asset class such as specialist advisors, legal advice, compliance staff and more operational staff to meet growing demand. There will also be added infrastructure and operational costs associated with new client types -for instance traditional FX clients now adding digital asset clients.

Given these complexities, market participants must ensure their software and technology infrastructure is both secure and adaptable, with the ability to support the regulatory and operational requirements of digital assets. Those relying on third-party software should verify that providers meet the cybersecurity and compliance mandates set by regulators. The introduction of new asset classes demands expanded AML/KYC functionalities, and non-interoperable transaction monitoring, reporting, or blockchain analytics tools can significantly increase compliance costs.

Businesses may need to evaluate new systems or ensure their existing technology infrastructure remains scalable and secure enough to support high transaction volumes. Technology infrastructure providers play a foundational role in enabling digital asset services and must ensure their platforms comply with security and data protection regulations. This involves ongoing investments in cybersecurity, regular audits, and the development of scalable solutions to accommodate increasing transaction volumes. As businesses expand into new markets, infrastructure providers

must offer adaptable solutions tailored to jurisdictional regulatory requirements, ensuring transparency in service delivery and data handling to maintain reliability and trust.

As digital asset markets and products evolve, security remains a top priority. Licensees and their service providers must implement advanced security protocols to prevent breaches and protect client data. Regular security audits and assessments are essential to identifying and mitigating vulnerabilities, ensuring operational resilience in a rapidly changing regulatory landscape.

Licensing Digital Asset Businesses

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

Yes. ASIC should proceed with the proposed class no-action position. This transition period will allow licensees and market participants the necessary time to make adjustments and ensure compliance within the clarified regulatory scope. It provides a more straightforward path than requiring individual no-action applications and allows for a structured approach to submitting any required variations within the 12-month period.

Publicly available no-action positions enhance transparency, ensuring businesses and consumers understand the regulatory framework and timelines. This approach aligns with ASIC's objective of providing commercial certainty, reducing business costs, and supporting economic efficiency and market development. By facilitating business continuity, no-action positions will help the industry transition smoothly toward digital asset service provision. However, if other stakeholders highlight potential risks, such as negative impacts on financial system efficiency, the position should be reviewed accordingly.

Ultimately, the proposal for class no-action positions allows existing licensed entities, who are already active market participants, to innovate and expand their offerings while preparing for the integration of additional asset classes under the evolving regulatory framework.

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

The proposed conditions are appropriate and provide a structured approach to regulatory compliance while ensuring investor protection. However, a few refinements could enhance their effectiveness.

Excluding crypto lending and earn-type products is a prudent approach, as these products carry higher risk and greater exposure to retail consumers. Their exclusion aligns with investor protection objectives. However, derivatives referencing digital assets (other than wrapped tokens) could be reconsidered. Allowing such derivatives under certain license types rather than fully excluding them from the no-action position could provide more regulatory clarity and flexibility for market participants.

For transparency, the class no-action position should be published and made accessible on ASIC's website for consumers and businesses to review. This ensures clarity on regulatory expectations and provides confidence to market participants. The provision that the class no-action remains in effect until a license decision or withdrawal is also a positive measure, as it allows businesses to focus on operations and innovation during the transition.

Finally, eligibility should not be limited to those who had commenced operations before the consultation paper's release but should also include entities that had received approval to commence operations before that date. Expanding the scope of the class no-action may work towards reducing market concentration and fostering competition.

License Applications and Ongoing Obligations

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.

Yes, digital assets that fall within the same financial product categories as traditional securities and derivatives should be subject to the same regulatory obligations. Applying the "same risk, same regulation" principle ensures consistency, standardisation, and investor protection while reinforcing trust in financial markets. This approach expands the regulatory scope without introducing new obligations, requiring only minor adjustments such as license variations or new applications under the Australian financial services licensing framework.

Digital assets are an extension of the broader financial ecosystem, not a distinct category requiring separate regulatory treatment. The focus should be on the output and financial product characteristics, not necessarily the underlying technology or method of delivery. Applying this to the same category helps to set market standards, promote clarity, and maintain safe and fair markets. Including digital assets within existing frameworks strengthens financial stability, prevents regulatory arbitrage, and ensures that market integrity is upheld across asset classes and extends ASICs oversight and supervisory powers.

To facilitate a smooth transition, ASIC should maintain a public notification register listing entities intending to provide digital asset services. The proposed no-action position allows for regulatory flexibility, increasing transparency through ASIC's website and industry channels would enhance market awareness and oversight. For existing licensees, digital assets should be recognised as an additional asset class within their existing authorisation. If a firm has the necessary policies, procedures, and investor protections in place, a formal notification to ASIC could help reduce unnecessary application burdens while ensuring regulatory oversight.

Establishing a separate regulatory regime for digital assets under ASIC would be unnecessary and could create regulatory fragmentation. A challenge in the digital asset space is the lack of international harmonisation and the inconsistencies in regulatory standards. ASIC may consider the EU whose MiFID and MiCA frameworks which follow the "same risk, same rule" principle, treating digital assets as financial products rather than standalone instruments. Through INFO 225, ASIC is working towards alignment with international best practices, reducing regulatory uncertainty, and supporting a competitive financial market.

A harmonised regulatory approach provides clarity, predictability, and stability, fostering a trustworthy and competitive financial environment. Applying traditional financial regulations to digital assets strengthens transparency, accountability, and systemic risk mitigation, particularly regarding market volatility, liquidity, and financial stability. Additionally, a consistent regulatory framework prevents the emergence of shadow banking systems in the digital asset sector, which could otherwise pose risks to the broader financial system.

Regulatory oversight is increasingly shifting towards financial product behavior rather than the underlying technology, allowing for a more adaptable and innovation-friendly framework. ASIC should continue revising financial product definitions to account for digital asset custody, security, and trading, ensuring that evolving products are appropriately classified within existing structures. To keep pace with innovation, regulatory frameworks should remain flexible and undergo regular reviews. Periodic updates to existing standards will support market growth, maintain investor confidence, and ensure digital assets are regulated within the broader financial ecosystem.

Applying the same regulatory obligations to digital assets and traditional financial products fosters market integrity, competition, and investor protection. This approach aligns with international standards, minimises regulatory gaps, and ensures financial markets remain stable and resilient. By integrating digital assets into the existing regulatory framework while allowing for adaptability, ASIC can support innovation while maintaining a clear, fair, and efficient financial system.

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

We support the notion that the existing AFS license requirements, conditions and processes should apply to digital assets that are financial products. This reiterates that these are financial products and will be treated the same regardless of underlying technology since the important bit is the impact they have on the economy and on users.

Holding digital asset service providers to lower regulatory standards than their traditional finance counterparts would create disparities, weaken market protections, and heighten stability and integrity risks. Consistent regulation ensures fair competition, prevents monopolisation, and strengthens financial market trust. Digital asset issuers, brokers and intermediaries perform similar functions to traditional financial firms and should be subject to the same expectations—transparency, conflict management, asset protection, fund segregation, risk management, compliance, and liquidity safeguards. These principles are fundamental to licensees and should extend to digital asset participants to support market stability and industry legitimacy. It is worth noting however, that digital assets may require specific risk management and infrastructure adjustments to accommodate their unique operational and technological characteristics.

Existing license holders should not require a separate digital asset checkbox but should update their internal policies where necessary. While the licensing forms should remain technology-neutral, digital asset-specific policies and procedures may be needed to address key areas such as liquidity management, risk exposure variations, technology audits and/or cybersecurity measures as well as blockchain analytics tools. Entities already licensed to provide financial services in relation to traditional assets should not be subject to unnecessary distinctions when incorporating digital assets, as their output, impact, and regulatory objectives remain the same. Instead, they should submit additional supporting documents, policies, and risk management frameworks as required.

We support the inclusion of digital asset derivatives under the AFS license, but distinctions could be made between leveraged and non-leveraged products. ASIC could consider allowing applicants to opt out of leverage and margining requirements at the application stage. This approach balances regulatory oversight, transparency, and consumer protection while maintaining a clear and efficient licensing process. Businesses should retain the flexibility to expand services as market conditions evolve. As derivatives permissions are already disclosed under Regulatory Guide 3 AFS Licensing Kit, ASIC's additional application process should ensure sufficient transparency on liquidity and margining requirements. We also support ASIC's proposal to provide sample questions and requisition topics to guide applicants.

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.

We do support extending omnibus accounts to digital assets that are financial products since there are record-keeping requirements. This will prevent unnecessary disruption of services.

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?

AFS licensees need to maintain the necessary expertise to provide financial services at the organisational level, rather than solely through individual representatives. To meet this obligation, licensees must appoint responsible managers who demonstrate relevant industry experience and competence. Option 1 appropriately aligns with widely adopted industry standards or APRA's relevant standards, requiring at least three years of relevant experience within the past five years. However, an exception should be considered for individuals who have worked in a regulated entity or served as a responsible person for another licensed organisation dealing in digital assets for over a year. In such cases, their experience should be sufficient to qualify under Option 5, if they are not relying on Options 1 to 4. This approach ensures that AFS licensees maintain high standards of competence, while also recognising practical industry experience in the evolving digital asset sector.

Consideration of Crypto Derivatives

B3Q1: In relation to the authorisations sought during an AFS licence application, do you agree that the existing authorisations are generally appropriate to digital asset service providers?

Yes. However, a service provider should be clearly defined to distinguish an entity actively engaged in dealing in digital assets from businesses that are merely adjacent or provide ancillary services.