

ASIC's proposed updates to digital asset guidance

'Digital assets and the technology underpinning them have the potential to significantly benefit Australia's economy, but only when they are underpinned by appropriate protection for consumers and investors.' – ASIC Commissioner Alan Kirkland

Digital assets have attracted significant attention from some investors in recent years, and that is likely to continue. As the regulator of those digital assets that involve financial products, ASIC needs to balance support for financial innovation with consumer protection through appropriate safeguards.

While work progresses on potential changes to the laws applying to digital assets, industry participants have been calling for more guidance and clarity on how *existing* laws apply. In response, ASIC is updating its guidance to the digital asset industry.

This work aligns and supports the Government's broader work on reforms in relation to digital asset facilities and payment stablecoins (as part of the payments services licensing reforms).

ASIC's proposed updates to INFO 225

This week, we released a consultation paper proposing updates to our guidance on the application of the current law to digital assets ([CP 381](#)) and are seeking industry feedback.

Leading up to this, we have monitored changes in the sector, consulted with experts, Treasury and other Government agencies, discussed new ventures with industry through our regulatory sandbox and innovation hub, and tested the application of the law through Federal Court proceedings.

We believe many widely traded digital assets are likely to be financial products under the current law and therefore, we expect many digital asset businesses will need to be licenced.

The current financial services regime is broad and technology neutral. To provide greater clarity about the current law, ASIC has proposed a range of updates to INFO 225, including adding 13 practical examples of how the current financial product definitions apply to digital assets and related products. The draft updated guidance also provides more detail and clarity for digital asset businesses on obtaining an Australian financial services (AFS) licence.

The consultation further seeks feedback on:

- our approach to wrapped tokens and stablecoins - whether to include an example on each of these products and whether anything is needed to ease transition to Treasury's proposed reforms for digital assets facilities and payment stablecoins.
- a potential no action position for those entities that actively seek a licence and abide by a small number of other conditions.

We encourage all stakeholders to engage with the consultation process and **invite your feedback by the end of February 2025**.

ASIC's approach to regulation and enforcement

Consumer protection and market integrity are key priorities for ASIC. At the same time, in our approach to enforcement, regulation, guidance, and industry engagement, we are continuing to think about how we can create a regulatory environment that enables innovation.

Getting an AFS licence is not a significant barrier to entry. We have more than 6,000 businesses with AFS licences, many of them fintechs. The requirements for licensees involve steps that should be taken in a well-run business – like making sure that you've got fit and proper people running

the business, that responsible managers are competent, and that you're able to run your business in a way that's efficient, honest and fair.

Some digital asset businesses may operate a financial market or a clearing and settlement (CS) facility, and therefore may require other licences, such as an Australian Financial Markets and/or CS facility licence from ASIC. The legislative regime for financial markets and CS facilities targets the specific risks that may arise from the operations of these arrangements and is also sufficiently flexible to cover a range of business models.

Regulation and enforcement help to foster trust – and trust is essential to every part of the financial system – digital assets and decentralised finance included.

A system with insufficient oversight, that is unpredictable and unreliable – leading to widescale investor losses or market manipulation or abuse – will ultimately fail to thrive.

We appreciate that it will take firms some time to digest ASIC's guidance and take steps to comply. Our consultation paper includes some proposals to deal with these transitional issues.

We also know that this is an area where the products, the market and the law will continue to evolve, and to keep pace with these developments, our guidance will continue to evolve over time as well.

If you are operating a business engaged in digital assets, we expect you to ensure that you are operating within the law. This includes engaging with our guidance and getting any necessary legal advice.

Where we see misconduct, including where your product requires a licence and you have not taken steps to obtain one, we will continue to take action.

For more information, visit asic.gov.au