Baker McKenzie.

Client Alert

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Australia: Australian Securities and Investments Commission releases key updates to digital asset guidance in INFO 225 and issues no action letter

Contents

In brief

ASIC has released important updates to its guidance in INFO 225 on the regulation of digital assets, including in relation to digital asset exchanges, digital wallets, tokenisation, and offshore digital asset businesses promoting, selling or providing services in relation to digital assets in Australia. The significance of these updates is that if a digital asset is a "financial product" the entity issuing, dealing in, advising on, or providing a custodial service in relation to (amongst other things) must hold an Australian financial services licence (**AFSL**) and otherwise comply with the conduct and disclosure obligations under Chapter 7 of the Corporations Act 2001 (Cth) subject to the exemptions. Further, digital asset exchanges trading digital assets characterised as financial products will need an Australian market licence subject to relevant exemptions, and depending on how transactions in digital assets that are financial products are cleared and/or settled a clearing and settlement (**CS**) facility licence may be required by the operator of such a facility.

Importantly, ASIC has issued a class no action letter indicating that it does not intend to take action against digital asset businesses that are in breach of the requirement to hold an AFSL, Australian market licence, or CS facility licence (subject to specific conditions) **if that business has on or before 30 June 2026**:

- **Lodged with ASIC an application for an AFSL** (including an application to vary the conditions on an existing AFSL) covering the provision of the financial services, **notifies ASIC** in writing of their intention to apply for an Australian market licence to allow the person to operate a financial market in relation to the digital assets and **attends the requisite meeting**, and/or **notifies ASIC** in writing of their intention to apply for an Australian CS facility licence and **attends the requisite meeting** (as applicable); or
- **Notified ASIC** in writing of their intention to **cease** to provide the financial services or cease to operate the financial market or clearing and settlement facility and comply with the stipulated content requirements for that written notice.

ASIC's class no-action position does **not** apply in relation to

- Crypto lending/earn products (facilities under which a person lends digital assets to others or pays a return to customers from the use of digital assets); or
- Non-cash payment facilities, other than stablecoins, where a digital asset is used to make a payment; or
- Derivatives (other than wrapped tokens) in relation to digital assets.

Key takeaways

- Businesses offering products and services in relation to digital assets will need to consider how ASIC's updated digital asset guidance applies to their business. The guidance provides a number of key principles as to ASIC's approach to digital assets and in light of this guidance businesses should carefully consider the licensing, conduct requirements (e.g., how client monies are dealt with), disclosure requirements (i.e,. what type of disclosure material must be presented to a customer), their marketing, and organisational competency (i.e., experience and qualifications of personnel) that may apply to their specific business. This can be a technical exercise, should you have any questions on how your business may be impacted by these developments please do not hesitate to contact us.

- In INFO 225, ASIC notes that the design or features of a digital asset can change over the course of the product development life cycle, and that entities are expected to seek professional advice and ensure ongoing compliance with the law. Businesses should ensure there is no "set and forget", and that they ensure they are in compliance with Australian financial services laws on an ongoing basis.
- ASIC makes clear in its updated INFO 225 that the definition of a financial product in Australia is often broader than comparable concepts in other jurisdictions. Global businesses marketing or promoting digital assets that are financial products in Australia, or otherwise providing financial services in relation to such digital assets should closely consider ASIC's guidance on this.
- Businesses will need to take action to consider whether they need to lodge an application or notification with ASIC prior to 30 June 2026 in relation to ASIC's no action letter.

In more detail

On 29 October 2025, ASIC released the updated Information Sheet - 225 (Digital assets: Financial Products and services) (**INFO 225**), draft ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX (**Stablecoin and Wrapped Token Instrument**), draft ASIC Corporations (Amendment) Instrument 2025/XXX (**Custody Amendment Instrument**) and a class no-action letter for digital asset businesses (**No-Action Letter**).

ASIC is currently taking submissions with feedback on the Stablecoin and Wrapped Token Instrument and the Custody Amendment Instrument up until 12 November 2025.

Background

Those following along will remember ASIC first published INFO 225 in September 2017. Since then, various updates have been made as the digital asset sector has grown and developed. INFO 225 provides concise guidance on whether a digital asset or related product is a financial product, and the associated financial services licensing, conduct and disclosure obligations under Australian law.

INFO 225 is aimed at all businesses involved in digital assets, including:

- Existing financial services and financial markets businesses, including those exploring the application of blockchain technology to existing financial products and real-world assets (e.g., tokenisation);
- New digital asset businesses;
- Brokers and intermediaries;
- Professional advisers to the above businesses.

It is important to note, and ASIC makes clear, INFO 225 is **not** and is not intended to be an exhaustive discussion of:

- All the relevant Australian laws, regulations, ASIC guidance or ASIC relief about financial products and services;
- How digital assets and any related products, however structured, fit into the existing financial services regime; or
- Each business' legal and regulatory obligations.

As made clear by ASIC, it is each business' responsibility to ensure it understands and complies with all relevant and applicable Australian laws and regulatory requirements.

In December 2024, ASIC consulted on updating INFO 225 and released Consultation Paper 381 setting out these proposals. For further information on this, see our update here.

On 25 September 2025, the Australian Government released draft legislation in relation to digital asset platforms (**DAPs**) and tokenised custody platforms. For further information on this, see our update here. ASIC has noted that the updated INFO 225 is aligned to and supports the Australian Government's broader work on the proposed DAP reforms, and complements the proposed reforms by clarifying what is a financial product and service under the current law.

Updates to INFO 225

ASIC has made comprehensive updates to INFO 225 in its updated guidance. We discuss some of the key updates below, however for any details on other aspects of the guidance please do not hesitate to contact us.

Firstly, in its overview to INFO 225, ASIC makes clear that the use of offshore or decentralised structures does not mean that key obligations under Australian laws do not apply or can be ignored, and refers businesses to Regulatory Guide 121 *Doing financial services business in Australia*. Australian financial services laws apply where a digital asset that is characterised as a financial product is promoted or sold, or services are provided in relation to them, in Australia, including from offshore. In noting this, in its updated guidance ASIC encourages entities to build their products and services in a way that complies with the intention of the laws in place to safeguard consumers and the integrity of financial markets in Australia. Further, ASIC specifically notes that the definition of a financial product in Australia is often broader than comparable concepts in other jurisdictions and that the definition of financial services in Australia can vary compared to other jurisdictions.

Second, INFO 225 provides clarity on ASIC's views as to how Australian financial services law applies to digital assets and digital asset services. The guidance considers types of digital assets made available to consumers in Australia and whether the Corporations Act 2001 (Cth) (**Corporations Act**) applies to these as "financial products". Where a person carries on a "financial services" business (in respect of a "financial product") in Australia, that person must hold an AFSL with the correct authorisations subject to the applicable exemptions and comply with the relevant conduct and disclosure requirements. Further, where a person operates a financial market in Australia (or holds out that it does so) it must hold an Australian market licence or rely on exemption, and similarly where a person operates a CS facility in Australia (or holds out that it does so) it must hold a CS facility licence. The guidance makes clear that the rights and benefits attached to digital assets (i.e., the bundle of rights benefits, expectations and product features), or products involving digital assets, are a key consideration in assessing the legal status of those digital assets and products. When a person trades a "token" they then transfer the rights associated with that token.

INFO 225 goes on to provide 18 hypothetical worked examples on whether a digital asset is likely to be a financial product under Chapter 7 of the Corporations Act. These include examples relevant to gaming tokens, managed staking and staking-as-a-service, tokenised real estate, stablecoins, tokenised bonds, and wrapped tokens. The examples cover whether a digital asset is a facility for making a financial investment (a general type of financial product), an interest in a managed investment scheme, a security (e.g., a share or debenture), a derivative, or a non-cash payment facility. Please note this is **not** an exhaustive list of all of the possible types of financial products under Chapter 7 of the Corporations Act.

The updated guidance provides useful guidance as to the circumstances in which a digital asset business may be providing a "financial service" including:

- Financial product advice. Of particular note, ASIC recommends that advisers have a working knowledge of the technology underpinning digital assets that are financial products and related financial products, and that they should be able to explain the extent that the technology changes the risks or benefits that are specifically in the interest of consumers;
- Dealing in a financial product. This includes arranging for another person to deal in financial products;
- Making a market in respect of a financial product; and
- Providing a custodial or depository service. Of particular note, ASIC notes that where a person controls the private keys related to an address on a public blockchain, they will likely be providing a custodial or depository service.

Third, ASIC makes clear in its updated INFO 225 that businesses operating without a licence or without being an authorised representative of a licensee, should be prepared to substantiate and justify why the digital asset(s) or related products or arrangements are not a regulated financial product (and why the business is not undertaking a financial service or operating a market or CS facility that requires a licence). Businesses should be able to justify this in relation to all aspects of its offering – for example a single project may include a number of digital assets and various arrangements to be characterised individually and then in combination.

Fourth, ASIC provides relevant guidance for businesses applying for an AFSL in relation to a digital asset business. Of particular note, in its guidance ASIC notes that it will consider providing a tailored licence authorisation where the digital asset or related product is novel, and that some additional or altered licence conditions may be applied in relation to AFSLs for financial services in relation to digital assets that are financial products. Further, in relation to the organisational competency obligation, in its updated guidance ASIC indicates that as a transitional approach only it will assess on a case-by-case basis whether a combination of two or more people may meet the responsible manager (**RM**) requirement where one RM oversees

the regulatory aspects, while the other oversees operational business decisions in relation to the digital assets and may have unregulated digital asset experience.

The ASIC guidance also covers a number of conduct and disclosure requirements for AFSL holders. This includes capital requirements, requirements as to how the financial product and financial services are marketed, disclosure requirements, conflicts of interest obligations and specifically how these apply to digital asset businesses, and client monies obligations. Of note, in its updated guidance ASIC notes that relief may be considered where a business can demonstrate that alternative arrangements will provide equivalent customer protections to the client money regime and other conditions are satisfied.

Updated INFO 225 also sets out specific guidance on what to consider when offering retail investors exposure to digital assets via a regulated investment vehicle.

Fifth, INFO 225 sets out further guidance on when a digital asset business requires an Australian market licence or CS facility licence. Of particular note, ASIC notes that where a digital asset is a financial product, then any platform that enables persons to make or accept offers to buy (or be issued) or sell those digital assets may involve the operation of a financial market, and that a business needs just one financial product trading on its market to mean it is are operating a financial market.

ASIC's No-Action Letter

As alluded to in ASIC's previous consultation on point, ASIC has now issued a class no action letter for digital asset businesses. This forms part of the transitional measures ahead of the proposed DAP law reform.

Subject to the limitations and conditions set out in the No-Action Letter, digital asset businesses must note the following:

- ASIC does not intend to take action against a person for a contravention of the requirement to hold an AFSL for the provision of financial services in relation to digital assets that are financial products **where on or before 30 June 2026, the person has lodged with ASIC an application for an AFSL** (including an application to vary the conditions on an existing AFSL) covering the provision of the financial services. This no action position will **not** apply in a number of circumstances including where ASIC notifies the person in writing that ASIC refuses to receive the application or to the extent ASIC refuses to grant the AFSL (or applicable variation);
- ASIC does not intend to take action against a person for a contravention of the requirement to hold an Australian market licence for operating a financial market only because one or more digital assets is a financial product, **where on or before 30 June 2026** the person has **notified ASIC in writing** of their intention to apply for an Australian market licence to allow the person to operate a financial market in relation to the digital assets **and attended an Australian market licence licensing pre-meeting** with ASIC in relation to the proposed application **and within 12 months after notifying ASIC the person has lodged an application for an Australian market licence** (including an application to vary the conditions on an existing Australian market licence) to allow the person to operate a financial market in relation to the digital assets. Again, this no action position will not apply in a number of circumstances, including where ASIC refuses to grant the person an Australian market licence;
- ASIC does not intend to take action against a person for a contravention of the requirement to hold an Australian CS facility licence for operating a clearing and settlement facility only because one or more digital assets is a financial product, **where on or before 30 June 2026** the person has **notified ASIC in writing** of their intention to apply for an Australian CS facility licence (including an application to vary the conditions on an existing licence) to allow the person to operate a CS facility in relation to the digital assets, **and attended a CS facility licensing pre-meeting with ASIC** in relation to the proposed application, **and within 12 months after notifying ASIC** the person has **lodged an application for an Australian CS facility licence** to allow the person to operate a clearing and settlement facility in relation to the digital assets. Again, the no action position will not apply in a number of circumstances, including where ASIC refuses to grant the person the licence.
- ASIC does not intend to take action against a person for failure to hold an AFSL (for the provision of financial services in relation to digital assets that are financial products), Australian market licence (for operating a financial market only because one or more digital assets is a financial product), or a CS facility licence (for operating a CS facility only because one or more digital assets is a financial product), where **on or before 30 June 2026**, the person has **notified ASIC in writing of their intention to cease** to provide the financial services or cease to operate the financial market or CS facility by a date specified in the notice no later than 30 June 2026. The notice must contain certain content requirements, and the person must cease to provide the relevant service on or before the specified date in the notice.

The class no-action position does **not** apply to:

- Crypto lending/earn products;
- Non-cash payment facilities, other than stablecoins, where a digital asset is used to make a payment; and
- Derivatives (other than wrapped tokens) in relation to digital assets.

A number of other conditions apply under the No-Action Letter including those specific to foreign companies. Please reach out should you like further information on this.

Businesses should note that the No-Action Letter can be withdrawn and ASIC reserves the right to take action in relation to matters set out in the No-Action Letter, particularly in the event that other information comes to light that was not known to ASIC at the time the No-Action Letter was issued.

Stablecoin and Wrapped Token Relief

The Stablecoin and Wrapped Token Instrument proposes providing class relief to distributors of eligible stablecoins and wrapped tokens. Consultation on this closes on Wednesday, 12 November 2025.

Custody Amendment Instrument

The Custody Amendment Instrument proposes to amend the ASIC Corporations (Custody Standards for Providers of Custodial and Depository Services) Instrument 2024/17 to allow omnibus account structures for digital assets under specified conditions.

Consultation on this closes on Wednesday, 12 November 2025.

Next Steps

Businesses offering products and services in relation to digital assets should closely consider how INFO 225 and the No-Action Letter applies to their circumstances. Should you have any questions on these developments, please do not hesitate to contact us for further information.

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