



30 May 2022

Director – Crypto Policy Unit  
Financial System Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

By email: [crypto@treasury.gov.au](mailto:crypto@treasury.gov.au)

Dear Hema,

Cboe Australia (**Cboe**) welcomes the opportunity to make submissions on Treasury Consultation Paper *Crypto asset secondary service providers: Licensing and custody requirements (the Consultation)*.

Cboe is supportive of Treasury's efforts to provide much needed regulatory clarity in this space. We are hopeful that a properly constructed regulatory regime will foster and encourage innovation, will improve the positions and protect the interests of industry and consumers, and will increase Australia's global competitiveness.

Cboe is a regulated financial market committed to transforming, improving and growing Australia's securities and derivatives markets. Cboe is a strong supporter of competition and innovation and we were proud to bring Australia's first crypto-asset ETFs to market. We welcome the continued development of the crypto-asset industry in Australia and see appropriate regulation as an important part of this process.

We have limited our submission to responses to certain questions relevant to our expertise. We make no comment in respect of all questions that are not explicitly addressed below.

#### Question 1

We are supportive of the proposed regime 'covering the field' when it comes to non-financial product crypto-asset secondary services. For this reason, we prefer CASSPr to digital currency exchange. However, we are concerned that the proposed definition of CASSPr may not fully cover the field. For example, providers of 'earn' type products that purport to generate a return in non-financial crypto-assets for depositing non-financial product crypto-assets with the provider might not be captured under any of the proposed limbs i to v. We consider that any service which would be regulated by ASIC but is not, solely because the relevant crypto-assets are not cash or financial products, should be included in the CASSPr regime.



## Question 6

We are broadly supportive of Treasury's identified policy aims. However, we are concerned by statements in the Consultation such as *"crypto assets require an order of magnitude less trust than other assets including financial products and should thus be considered differently"* and *"much of the need for regulatory recourse that may be required for financial products does not necessarily exist for many crypto assets"*. We consider that this overvalues certain claims made by proponents of the technology and could result in a regime that does not have adequate investor protections.

Multiple layers of trust are built into most crypto-assets. In relation to the underlying blockchain, users are: trusting developers to build secure software; trusting miners not to collude or attack the blockchain; and trusting the wider cryptocurrency governance process not to approve malicious actions. In relation to the assets of the blockchain, users are: trusting that markets are not being manipulated; trusting that wallets will generate secure keys; and trusting that trading platforms are using adequate security practices. Trust is clearly still present. The biggest differences with conventional markets are that most of this trust is unspoken, often not understood by consumers, highly technical in nature, and there is virtually no legal recourse should one or more of these trusts be broken<sup>1</sup>.

Where there are trust relationships, there are inside information risks, and there is plenty of evidence to suggest that there are insider trading concerns in the crypto markets<sup>2</sup>.

As such, we consider additional key policy objectives for the regime should be to address these risks to the extent possible and to ensure that investors are sufficiently educated about the nature and risks of crypto-assets. Treasury may wish to consider ASIC's guidance in relation to crypto-asset investment products as a starting point.

## Question 11

We are generally supportive of the proposed CASSPr license obligations however we suggest that Treasury consider the following additional obligations. These suggestions apply mainly in the area of markets, but could also apply to other areas within CASSPrs.

1. An obligation for a crypto market to have publicly available operating rules.
2. A suspicious activity reporting requirement in relation to suspected insider trading or market manipulation
3. A breach reporting requirement to support proposed obligation 7 (to comply with all relevant Australian laws)
4. An obligation to conduct due diligence and be satisfied that a particular crypto-asset is appropriate for retail investors before offering products or services in respect of that crypto-asset. We are concerned that proposed obligations 8 and 9 may not be sufficient as

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<sup>1</sup> Rebecca M. Bratspies, *Cryptocurrency and the Myth of the Trustless Transaction*, 25 Mich. Telecomm. & Tech. L. Rev. 1 (2018). Available at: <https://repository.law.umich.edu/mttlr/vol25/iss1/2>

<sup>2</sup> The Wall Street Journal, *Crypto Might Have an Insider Trading Problem*, May 21, 2022. Available at: <https://www.wsj.com/articles/crypto-might-have-an-insider-trading-problem-11653084398>



investor protection mechanisms, in particular because obligation 9 appears to only apply after-the-fact.

5. An obligation to support a compensation fund for consumers. We suggest an analogous body to the Securities Exchanges Guarantee Corporation as a starting point to consider.

We consider these are necessary to help support the fair, transparent and orderly operation of markets.

Treasury may also wish to consider whether there would be merit in mandating an Australian domicile requirement in respect of custody of crypto-assets held for Australian consumers.

#### Question 17

Cboe does not support self-regulation by the crypto industry. We consider it may lead to insufficient investor protections and a material gap in standards between CASSPrs and their ASIC regulated equivalents.

Cboe makes no further comments. We once again thank Treasury for the important work it is undertaking and the opportunity to make submissions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Asika', with a long, sweeping flourish extending upwards and to the right.

**Asika Wickramasinghe**  
Senior Legal Counsel  
Cboe Australia Pty Ltd