

**To: Crypto Policy Unit  
Financial System Division  
Treasury  
Langton Cres  
Parkes ACT 2600**

Dear Treasurer,

DigitalX is an Australian listed company with a unique model. We have Bitcoin on our balance sheet, offer digital asset funds management services and are in the process of establishing a real world asset tokenisation fund. We consider ourselves to be fully regulated and put a lot of time and effort into compliance.

Being a small team, we have responded only to the questions in the consultation paper that are directly relevant to our businesses and on which we consider ourselves to be subject matter experts. As I am Deputy Chair of Blockchain Australia, DigitalX has also contributed to the submission lodged by the representative body.

We feel this consultation is critical for our industry and welcome any questions you have on our point of view.

Thank you for the opportunity to contribute to the conversation.

## DigitalX Ltd. Response to the Treasury Token Mapping Consultation Paper

### Question 4:

The concept of 'exclusive use or control' of public data is a key distinguishing feature between crypto tokens/crypto networks and other data records.

- a) How do you think the concepts could be used in a general definition of crypto token and crypto network for the purposes of future legislation?
- b) What are the benefits and disadvantages of adopting this approach to define crypto tokens and crypto networks?

### Answer:

**4a)** The paper has addressed the difference between crypto networks and tokens well, but some elaboration is required for the need of the crypto token.

1. Crypto networks operate via hosts of computers run by different people over different jurisdictions – it is similar to the cloud services provided by Google/Amazon except there is no central entity that controls the network and anyone in the world is free to join with the authorisation of a central entity.
2. However, due to the decentralised nature of the crypto network, an incentive needs to be in place for people to place their hardware and bandwidth to secure the crypto network.
3. The incentive is the crypto token. This is normally held in a wallet under the “**exclusive control**” of the wallet holder.

### **A reasonable general definition for a crypto token is:**

Any data/token that requires the explicit authorisation of a person/group of people before an action.

### **A reasonable general definition for a crypto network is:**

Any network where participants can join/leave without the explicit authorisation of a person/group of people.

A crypto network which requires the approval of a group of people or entity should be classified as a crypto token instead regardless of any other claims of its technology stack or governance processes.

We would argue that not all Crypto is created equal in terms of the underlying purpose of and hence associated rewards or “cryptonomics” of each token - as investors in the space we discern among a myriad of factors across the entire universe. See question 5 for more on this.

A difficulty in using 'exclusive use or control' in a crypto asset definition comes from the lack of 'exclusive use or control' within insufficiently decentralised crypto networks. Stablecoins held by individuals have in the past been seized by issuers and other tokens are vulnerable to actions from either the controlling entity or a collusion of node operators. See the BNB tokens recovered by Binance following a hack in 2022 as an example.

**4b)** The advantage of the approach is a clear delineation of a truly decentralised network which is freely available to the public to use/join/leave versus something which on paper claims decentralisation but requires the approval/authorisation of a group of people / entity.

## Question 5:

This paper sets out some reasons for why a bespoke 'crypto asset' taxonomy may have minimal regulatory value.

- a) What are additional supporting reasons or alternative views on the value of a bespoke taxonomy?
- b) What are your views on the creation of a standalone regulatory framework that relies on a bespoke taxonomy?
- c) In the absence of a bespoke taxonomy, what are your views on how to provide regulatory certainty to individuals and businesses.

## Answer:

**5a)** We agree that there is little benefit in creating a bespoke crypto asset taxonomy. Most of the applications of crypto are broad and evolve very fast and a bespoke taxonomy would at best become outdated relatively quickly and lead to many inconsistencies.

From a Government regulation point of view this needs to be given careful consideration so as to not stifle innovation - e.g. many networks and innovators offer token rewards as incentives to grow and experiment with the underlying technologies their networks facilitate and create. A taxonomy which seeks to lump networks and tokens into certain buckets may have unintended consequences of stifling innovation or worse pushing innovators offshore.

Conversely - Australia has a golden opportunity to set up a favourable regime to encourage Cryptographic innovation by setting criteria under which tokens validating registered and approved technologies could actually be treated fairly to foster innovation in Australia. We would recommend stakeholder mapping to establish valuable technologies to be incentivised to call Australia home.

**5b)** While a bespoke crypto taxonomy may offer minimal benefit, a standalone regulatory framework based on broad principles based classifications as discussed in the consultation paper would still be beneficial. The paper addressed the gaps in current regulations which targets the performance of intermediaries, agents, and financial markets in meeting the promises underlying financial contracts. Standalone regulation would be particularly useful when looking at the decentralised finance segment of the market.

**5c)** Many problems that the industry faced in 2022 were a result of a lack of segregation of duties which is a basic building block of sustainable risk management, transparency and reducing risks associated with a single point of failure.

A prime example of this is where exchanges custodied all client assets leading to a single point of failure. Furthermore, some exchanges engaged in trading against their own clients with client funds. A simple mandate which could be part of a license approval process such as adding an independent custodian such that exchanges only operate with a small % of total client assets at any given time would provide a lot of certainty as guardrails around risk could be quantified providing greater confidence to individuals and businesses.

In the absence of a bespoke taxonomy a well thought out licensing and compliance process could provide regulatory certainty to individuals and businesses.

## Question 6

Some intermediated crypto assets are 'backed' by existing items, goods, or assets. These crypto assets can be broadly described as 'wrapped' real world assets.

a) Are reforms necessary to ensure a wrapped real-world asset gets the same regulatory treatment as that of the asset backing it? Why? What reforms are needed?

b) Are reforms necessary to ensure issuers of wrapped real-world assets can meet their obligations to redeem the relevant crypto tokens for the underlying good, product, or asset?

### Answer

**6a)** We recommend no reform as ASIC already reaffirmed the view that legislative obligations and regulatory requirements are technology-neutral and apply irrespective of the mode of technology that is being used to provide a regulated service. As long as the wrapping doesn't change the characteristics of the underlying asset, the 'wrapped' real world asset or digital twin should be treated the same as the underlying asset.

**6b)** We recommend the following to ensure issuers of wrapped real-world assets can meet their redemption obligations:

- **Redemption Procedures:** Issuers of real world asset tokens should be required to establish clear and transparent procedures for redeeming the tokens they issue. These procedures should include the terms and conditions for redemption, the time frame for redemption, and the process for verifying ownership of the tokens.
- **Compliance Requirements:** Issuers of real world asset tokens should be required to comply with all applicable laws and regulations relevant to the underlying assets, including but not limited to, anti-money laundering (AML) and know-your-customer (KYC) regulations.

## Question 7

It can be difficult to identify the arrangements that constitute an intermediated token system.

a) Should crypto asset service providers be required to ensure their users are able to access information that allows them to identify arrangements underpinning crypto tokens? How might this be achieved?

b) What are some other initiatives that crypto asset service providers could take to promote good consumer outcomes?

### Answer

**7a)** Yes, crypto asset service providers should be required to ensure their users are able to access information that allows them to identify arrangements underpinning crypto tokens.

- **Disclosure Requirements:** This information should include, but not limited to, the nature of the asset, the ownership structure, any relevant regulatory approvals, any contractual obligations that may affect the value of the asset, and the relevant terms and conditions for redemption. This will ensure that investors have a complete

understanding of the underlying asset and the risks involved in investing in the tokens.

- Information Accessibility: Token issuers must ensure that users have access to the relevant information, either directly or through an authorized third party. This can be achieved through a public blockchain explorer, a website or other platform, or a third-party service provider.
- Updates and Notifications: Token issuers must keep the information up-to-date and provide timely notifications to users of any changes or material events that may affect the underlying real-world asset.

## 7b) Other initiatives to promote good consumer outcomes:

- Education and Awareness: Token issuers could take the initiative to educate and create awareness among consumers about the risks and opportunities associated with investing in tokenized assets. This could be done through user-friendly guides, video tutorials, or webinars that are accessible to all.
- Community Engagement: Token issuers could actively engage with their community of users, soliciting feedback and input, responding to queries and concerns, and providing support when required. This could be done through social media, forums, or other channels that allow for open and transparent communication.

## Question 8

In addition to the functional perimeter, the Corporations Act lists specific products that are financial products. The inclusion of specific financial products is intended to both: (i) provide guidance on the functional perimeter; (ii) add products that do not fall within the general financial functions.

a) Are there any kinds of intermediated crypto assets that ought to be specifically defined as financial products? Why?

b) Are there any kinds of crypto asset services that ought to be specifically defined as financial products? Why?

## Answer

**8.a** We recommend no additional inclusion for intermediated crypto assets in specific. ASIC existing guidelines are sufficient to determine whether a crypto-asset is a financial product based on three factors:

1. Legal rights attached to the crypto-asset – Does the recipient receive any ownership rights such as voting or distributions;
2. Function or purpose of the crypto-asset – Is its value linked to an off-platform asset, commodity or index;
3. How was the crypto-asset funded – Are investor funds pooled for a common financial benefit?

Considering the above factors, crypto-asset can fall within the definition of other traditional forms of financial products and services such as:

Managed Investment Schemes  
Shares  
Derivatives

## Non-cash payment facilities

**8.b** Similarly, we recommend that no specific crypto asset services be specifically defined as financial products. Crypto asset services should also follow existing legislation on classification of financial products and services.

### Question 9

Some regulatory frameworks in other jurisdictions have placed restrictions on the issuance of intermediated crypto assets to specific public crypto networks. What (if any) are appropriate measures for assessing the suitability of a specific public crypto network to host wrapped real world assets?

#### Answer

Due to the unique nature of crypto networks and the relative infancy of many newer networks which are still in “beta” some basic restrictions would make sense such as:

1. The crypto-network which hosts the intermediated crypto asset must be “sufficiently decentralised” so no small group of actors could manipulate the data.
2. The crypto-network which hosts the intermediated crypto asset must have had enough time in the sun (ie: not in beta, have had sufficient audits)

All other limits should follow the existing financial services framework.

### Question 10:

Intermediated crypto assets involve crypto tokens linked to intangible property or other arrangements. Should there be limits, restrictions or frictions on the investment by consumers in relation to any arrangements not covered already by the financial services framework? Why?

#### Answer:

There should be no additional limits, restrictions or frictions on the investment by consumers. The limits and restrictions or frictions should be on the services providers according to the production as covered by existing legislation.

### Question 11:

Some jurisdictions have implemented regulatory frameworks that address the marketing and promotion of products within the crypto ecosystem (including network tokens and public smart contracts). Would a similar solution be suitable for Australia? If so, how might this be implemented?

#### Answer:

Existing rules for the marketing and promotion of financial products should be applied to the crypto ecosystem too. If any network or smart contract has its own tradable token it must fall under the existing rules.